

17 Am. Jur. 2d Consumer Protection One VII A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

Part One. Federal Legislation


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[Effect of Federal Home Mortgage Disclosure Act of 1975 \(12 U.S.C.A. secs. 2801-2809\) on enforcement of state disclosure and antiredlining statutes against federal financial institutions, 57 A.L.R. Fed. 322](#)

Treatises and Practice Aids

As to introduction to home mortgage disclosure procedures, see Federal Procedure, L. Ed.—Banking and Financing [\[Westlaw®: Search Query\]](#)

As to application for exemption for home mortgage disclosure procedures, see Federal Procedure, L. Ed.—Banking and Financing [\[Westlaw®: Search Query\]](#)

Upon findings of Congress that some depository institutions have sometimes contributed to the decline of certain geographic areas by their failure to provide adequate home financing to qualified applicants on reasonable terms and conditions,¹ the Home

Mortgage Disclosure Act (HMDA)² was enacted with the purpose of providing citizens and public officials with sufficient information to enable them to determine whether depository institutions are filling their obligations to serve the housing needs of the communities and neighborhoods in which they are located and to assist public officials in their determination of the distribution of public sector investments in a manner designed to improve the private investment environment.³

Depository institutions having total assets of \$10 million or less are exempt from the HMDA.⁴

The term "mortgage loan" as used in the HMDA means a loan which is secured by residential real property or a home improvement loan.⁵

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Footnotes

- | | |
|---|------------------------------|
| 1 | 12 U.S.C.A. § 2801(a). |
| 2 | 12 U.S.C.A. §§ 2801 to 2810. |
| 3 | 12 U.S.C.A. § 2801(b). |
| 4 | 12 U.S.C.A. § 2808(a). |
| 5 | 12 U.S.C.A. § 2802(2). |

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§ 219. Maintenance of records; public disclosure

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West's Key Number Digest

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Treatises and Practice Aids

As to introduction to home mortgage disclosures, see Federal Procedure, L. Ed.—Banking and Financing [[Westlaw®: Search Query](#)]

A depository institution which falls within the statutory terms in the Home Mortgage Disclosure Act (HMDA) must compile and make available to the public for inspection and copying at its offices as prescribed by the HMDA the number and total dollar amount of mortgage loans which it originated or purchased during each fiscal year.¹ The HMDA is specific as to the itemization of the information so required to be maintained and made available² and the itemization of loan data,³ with respect to which there are certain exemptions,⁴ as well as a requirement that the data be submitted to certain specified federal agencies.⁵ The requirements of the above provisions do not apply with respect to mortgage loans that are made (or for which completed applications are received) by any mortgage banking subsidiary of a bank holding company or savings and loan holding company or by any savings and loan service corporation that originates or purchases mortgage loans and are approved (or for which completed applications are received) by the Secretary of Housing and Urban Development for insurance under Title I or II of the National Housing Act.⁶ The HMDA is specific as to the period for which the information must be maintained.⁷

The Bureau of Consumer Financial Protection must prescribe a standard format for the required disclosures.⁸ Further, the Federal Financial Institutions Examination Council, in consultation with the Secretary of Housing and Urban Development, must implement a system to facilitate access to data required to be disclosed.⁹ The Council must compile aggregate data for all depository institutions required to make disclosures,¹⁰ and the Secretary must make certain data in his or her possession publicly available.¹¹

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Footnotes

- 1 12 U.S.C.A. § 2803(a)(1).
As to the definition of "depository institution," see 12 U.S.C.A. § 2802(3).
- 2 12 U.S.C.A. § 2803(a)(2).
- 3 12 U.S.C.A. § 2803(b).
- 4 12 U.S.C.A. § 2803(i).
- 5 12 U.S.C.A. § 2803(h).
- 6 12 U.S.C.A. § 2803(g).
As to Titles I and II of the National Housing Act (12 U.S.C.A. §§ 1702 et seq., 1707 et seq.), see Am. Jur. 2d, Housing Laws and Urban Redevelopment § 7.
- 7 12 U.S.C.A. § 2803(c).
- 8 12 U.S.C.A. § 2803(e).
- 9 12 U.S.C.A. § 2803(f).
- 10 12 U.S.C.A. § 2809.
- 11 12 U.S.C.A. § 2810.

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§ 220. Regulations; enforcement

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Treatises and Practice Aids

As to enforcement procedures for home mortgage disclosures, see Federal Procedure, L. Ed.—Banking and Financing
[\[Westlaw®: Search Query\]](#)

The Bureau of Consumer Financial Protection must prescribe necessary regulations to carry out the purposes of the Home Mortgage Disclosure Act (HMDA).¹ The Bureau has issued an implementing regulation.²

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under the HMDA are to be enforced under specified federal statutes by specified federal officers and agencies.³ For the purpose of the exercise of such enforcement power, a violation of any requirement imposed under the HMDA is deemed to be a violation of the federal statute enforced by such federal officer or agency.⁴ Subject to subtitle B of the Consumer Financial Protection Act of 2010, enforcement of the requirements imposed under HMDA is committed to each of the agencies under the specified federal statutes. To facilitate research, examinations, and enforcement all data collected⁵ must be available to those entities. The Bureau may exercise its authorities under the Consumer Financial Protection Act of 2010 to exercise principal authority to examine and enforce compliance by any person with the requirements of HMDA.⁶

The HMDA only provides for administrative enforcement.⁷

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Footnotes

- 1 12 U.S.C.A. § 2804(a).
- 2 12 C.F.R. §§ 1003.1 et seq.
- 3 12 U.S.C.A. § 2804(b).
- 4 12 U.S.C.A. § 2804(c).
- 5 § 219.
- 6 12 U.S.C.A. § 2804(d).
- 7 Swartz v. City Mortg., Inc., 911 F. Supp. 2d 916 (D. Haw. 2012).

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§ 221. Disclosures required by Truth in Lending Act

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Forms

Forms relating to referral to contract document, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [\[Westlaw® Search Query\]](#)

Forms relating to four installment disclosures, generally, see Am. Jur. Pleading and Practice Forms—Truth in Lending and Consumer Credit Protection; Federal Procedural Forms (L.Ed.)—Consumer Credit Protection [\[Westlaw® Search Query\]](#)

Under the Truth in Lending Act,¹ disclosures in residential mortgage transactions² must indicate whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.³

Creditors must also disclose, in the case of any variable interest rate residential mortgage transaction, in disclosures provided at application as prescribed by the Bureau for a variable rate transaction secured by the consumer's principal dwelling, at the option of the creditor, a statement that the periodic payments may increase or decrease substantially, and the maximum interest rate and payment for a \$10,000 loan originated at a recent interest rate, as determined by the Bureau, assuming the maximum periodic increases in rates and payments under the program, or a historical example illustrating the effects of interest rate changes implemented according to the loan program.⁴

In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, the creditor must include a clear and conspicuous statement that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes; and the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.⁵

Creditors must disclose, in the case of a variable rate residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments (1) the amount of initial monthly payment due under the loan for the payment of principal and interest, and the amount of such initial monthly payment including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments; and (2) the amount of the fully indexed monthly payment due under the loan for the payment of principal and interest, and the amount of such fully indexed monthly payment, including the monthly payment deposited in the account for the payment of all applicable taxes, insurance, and assessments.⁶

In the case of a residential mortgage loan, creditors must disclose the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.⁷

Also, in the case of a residential mortgage loan, creditors must disclose the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor.⁸ In addition, the creditor must disclose the total amount of interest that the consumer will pay over the life of the loan as a percentage of the principal of the loan, which must be computed assuming the consumer makes each monthly payment in full and on-time and does not make any over-payments.⁹

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Footnotes

- | | |
|---|--|
| 1 | The Truth in Lending Act is discussed generally in §§ 1 to 146. |
| 2 | "Residential mortgage transactions" is defined in 15 U.S.C.A. § 1602(x).
The term "dwelling" is defined in 15 U.S.C.A. § 1602(w). |
| 3 | 15 U.S.C.A. § 1638(a)(13). |
| 4 | 15 U.S.C.A. § 1638(a)(14). |
| 5 | 15 U.S.C.A. § 1638(a)(15). |
| 6 | 15 U.S.C.A. § 1638(a)(16). |
| 7 | 15 U.S.C.A. § 1638(a)(17). |
| 8 | 15 U.S.C.A. § 1638(a)(18). |
| 9 | 15 U.S.C.A. § 1638(a)(19). |

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§ 222. Disclosures required by Truth in Lending Act—Residential mortgage transactions subject to Real Estate Settlement Procedures Act

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Except as otherwise provided,¹ in the case of any extension of credit that is secured by a dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act,² good-faith estimates of the disclosures by statute³ must be made in accordance with regulations of the Bureau and must be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, which must be at least seven business days before consummation of the transaction.⁴ Certain additional disclosures are required in the case of an extension of credit that is secured by the dwelling of a consumer,⁵ and in the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable.⁶ Also, in any case in which the required disclosure statement contains an annual percentage rate of interest that is no longer accurate, the creditor must furnish an additional, corrected statement to the borrower, not later than three business days before the date of consummation of the transaction.⁷ The consumer must receive the required disclosures before paying any fee to the creditor or other person in connection with the consumer's application for an extension of credit that is secured by the dwelling of a consumer. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed. A creditor or other person may impose a fee for obtaining the consumer's credit report before the consumer has received the disclosures provided the fee is bona fide and reasonable in amount.⁸

To expedite consummation of a transaction, if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency, the consumer may waive or modify the timing requirements for disclosures if certain conditions are met.⁹

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Footnotes

- 1 Exceptions to these requirements are made in [15 U.S.C.A. § 1638\(b\)\(2\)\(G\)](#).
- 2 §§ [210](#) to [217](#).
- 3 [§ 221](#).
- 4 [15 U.S.C.A. § 1638\(b\)\(2\)\(A\)](#).
- 5 [15 U.S.C.A. § 1638\(b\)\(2\)\(B\)](#).
- 6 [15 U.S.C.A. § 1638\(b\)\(2\)\(C\)](#).
- 7 [15 U.S.C.A. § 1638\(b\)\(2\)\(D\)](#).
- 8 [15 U.S.C.A. § 1638\(b\)\(2\)\(E\)](#).
- 9 [15 U.S.C.A. § 1638\(b\)\(2\)\(F\)](#).

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§ 223. Disclosures required by Truth in Lending Act—High-cost mortgages

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There are specific disclosure requirements for high-cost mortgages.¹ The following disclosures must be provided in conspicuous type size: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application" and, "If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."² In addition, the creditor must disclose, in the case of a credit transaction with a fixed rate of interest, the annual percentage rate and the amount of the regular monthly payment or, in the case of any other credit transaction, the annual percentage rate of the loan, the amount of the regular monthly payment, a statement that the interest rate and monthly payment may increase, and the amount of the maximum monthly payment, based on the maximum interest rate allowed by statute.³

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Footnotes

- ¹ 15 U.S.C.A. § 1639.
High-cost mortgage is defined in 15 U.S.C.A. § 1602(bb).
- ² 15 U.S.C.A. § 1639(a)(1).
- ³ 15 U.S.C.A. § 1639(a)(2).

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The Bureau of Consumer Financial Protection is required to publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of the Truth in Lending Act in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law.¹ The Board has promulgated such forms and clauses,² but creditors are not required to use these model forms or clauses.³

Observation:

Where model forms would be misleading, the lender should ideally provide nonstandard notice forms of its own.⁴

A creditor or lessor is deemed to be in compliance with the disclosure provisions of the Act with respect to other than numerical disclosures if the creditor or lessor: (1) uses any appropriate model form or clause as published by the Bureau; or (2) uses any

such model form or clause and changes it by deleting any information which is not required by the Act or rearranging the format, if in doing so, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.⁵

Observation:

When a lender employs a model form recommended by the Bureau, an isolated circle or mark cannot create liability under the Truth in Lending Act.⁶

CUMULATIVE SUPPLEMENT

Cases:

Lending disclosure form provided to mortgagor by lender's trustee's predecessor violated the Truth in Lending Act's disclosure requirements, in that it did not inform mortgagor clearly that his existing first mortgage was unaffected by timely rescission of the second mortgage, and thus, mortgagor's rescission rights were extended from three days to three years. Truth in Lending Act, § 125(f), (i)(1)(B), 15 U.S.C.A. § 1635(f), (i)(1)(B); 12 C.F.R. § 226.23(f)(2). *Deutsche Bank Nat. Trust Co. v. Gardner*, 2015 PA Super 219, 125 A.3d 1221 (2015).

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Footnotes

- 1 15 U.S.C.A. § 1604(b).
The Real Estate Settlement Procedures Act is discussed in §§ 210 to 217.
- 2 12 C.F.R. § 226, App. G, 12 C.F.R. § 226, App. H
- 3 15 U.S.C.A. § 1604(b).
- 4 *In re Porter*, 961 F.2d 1066 (3d Cir. 1992).
- 5 15 U.S.C.A. § 1604(b).
- 6 *Smith v. Check-N-Go of Illinois, Inc.*, 200 F.3d 511 (7th Cir. 1999) (referring to the Federal Reserve Board whose functions in this regard were transferred to the Bureau of Consumer Financial Protection).

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§ 225. Insurance of home-equity-conversion mortgages for elderly homeowners

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West's Key Number Digest, [United States](#)  53(9)

The Secretary of Housing and Urban Development may, upon application by a mortgagee, insure any home-equity-conversion mortgage eligible for insurance and, upon such terms and conditions as the Secretary may prescribe, make commitments for the insurance of such mortgages prior to the date of their execution or disbursement to the extent that the Secretary determines such mortgages: (1) have promise for improving the financial situation or otherwise meeting the special needs of elderly homeowners; (2) will include appropriate safeguards for mortgagors to offset the special risks of such mortgages; and (3) have a potential for acceptance in the mortgage market.¹ Eligibility requirements for insurance for a home-equity-conversion mortgage are set out in detail in the statute.² Each mortgagee of a mortgage insured under this statute is required to make available to the homeowner certain disclosures as provided for in the statute.³ The statute also provides for counseling services and information for mortgagors,⁴ the administrative authority of the Secretary,⁵ protection of the homeowner and lender,⁶ safeguards to prevent displacement of a homeowner,⁷ insurance authority for refinancings,⁸ funding for counseling,⁹ authority to insure a home purchase mortgage,¹⁰ requirements on mortgage originators,¹¹ prohibition against requirements to purchase additional products,¹² a study to determine consumer protections and underwriting standards,¹³ and limits on the origination fees.¹⁴

CUMULATIVE SUPPLEMENT

Cases:

Statute specifying types of mortgages that Department of Housing and Urban Development (HUD) "may not insure" could not prevent foreclosure pursuant to valid reverse-mortgage contract that permitted lender by its terms to demand repayment

immediately following borrower's death, even if non-borrowing spouse continued to live in mortgaged property. [12 U.S.C.A. § 1715z-20\(j\)](#). *Estate of Jones v. Live Well Financial, Inc.*, 902 F.3d 1337 (11th Cir. 2018).

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Footnotes

- 1 [12 U.S.C.A. § 1715z-20\(c\)](#).
The term "home equity conversion mortgage" means, in pertinent part, a first mortgage which provides for future payments to the homeowner based on accumulated equity. [12 U.S.C.A. § 1715z-20\(b\)\(3\)](#).
- 2 [12 U.S.C.A. § 1715z-20\(d\)](#).
- 3 [12 U.S.C.A. § 1715z-20\(e\)](#).
- 4 [12 U.S.C.A. § 1715z-20\(f\)](#).
- 5 [12 U.S.C.A. § 1715z-20\(h\)](#).
- 6 [12 U.S.C.A. § 1715z-20\(i\)](#).
- 7 [12 U.S.C.A. § 1715z-20\(j\)](#).
- 8 [12 U.S.C.A. § 1715z-20\(k\)](#).
- 9 [12 U.S.C.A. § 1715z-20\(l\)](#).
- 10 [12 U.S.C.A. § 1715z-20\(m\)](#).
- 11 [12 U.S.C.A. § 1715z-20\(n\)](#).
- 12 [12 U.S.C.A. § 1715z-20\(o\)](#).
- 13 [12 U.S.C.A. § 1715z-20\(p\)](#).
- 14 [12 U.S.C.A. § 1715z-20\(r\)](#).

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§ 226. Prohibition against discrimination on account of sex in extension of mortgage assistance

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No federally related mortgage loan or federal insurance, guaranty, or other assistance in connection therewith (under the national housing chapter or any other Act) may be denied to any person on account of sex, and every person engaged in making mortgage loans secured by residential real property must consider without prejudice the combined income of both husband and wife for the purpose of extending mortgage credit in the form of a federally related mortgage loan to a married couple or either member thereof.¹ The term "federally related mortgage loan" is defined in the statute.²

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Footnotes

¹ 12 U.S.C.A. § 1735f-5(a).

² 12 U.S.C.A. § 1735f-5(b).

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§ 227. Mortgage relief for homeowners who are unemployed as result of closing of federal installation

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Any distressed mortgagor, for the purpose of avoiding foreclosure of his or her mortgage, may apply to the appropriate federal mortgage agency for a determination that suspension of his or her obligation to make payments due under such mortgage during a temporary period is necessary in order to avoid such foreclosure.¹ The term "distressed mortgagor" means an individual who was employed by the federal government at, or was assigned as a serviceman to, a military base or other federal installation and whose employment or service at such base or installation was terminated subsequent to November 1, 1964, as the result of the closing (in whole or in part) of such base or installation and is the owner-occupant of a dwelling situated at or near such base or installation and upon which there is a mortgage securing a loan which is in default because of the inability of such individual to make payments due under such mortgage.² The mortgages covered by the statute are limited to certain federally guaranteed or insured mortgages.³

Upon receipt of an application made under this statute by a distressed mortgagor, the federal mortgage agency must issue to such mortgagor a certificate of moratorium if it determines, after consultation with the interested mortgagee, that such action is necessary to avoid foreclosure.⁴ Prior to the issuance to any distressed mortgagor of a certificate of moratorium, the federal mortgage agency, the mortgagor, and the mortgagee must enter into a binding agreement setting forth criteria set out in the statute.⁵ The term of the certificate of moratorium is also provided for.⁶

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Footnotes

- 1 12 U.S.C.A. § 1735g(b)(1).
- 2 12 U.S.C.A. § 1735g(a)(3).
- 3 12 U.S.C.A. § 1735g(a)(1).
- 4 12 U.S.C.A. § 1735g(b)(2).
- 5 12 U.S.C.A. § 1735g(b)(3).
- 6 12 U.S.C.A. § 1735g(b)(4).

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Tracy Bateman Farrell, J.D.; Amy G. Gore, J.D., of the staff of the National Legal Research Group, Inc.; Lonnie E. Griffith, Jr., J.D. and Karl Oakes, J.D.

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§ 228. High-cost mortgages

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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In addition to satisfying certain disclosure requirements,¹ a high-cost mortgage may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal before the date on which the principal is due² nor may it contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments.³ Moreover, a high-cost mortgage may not include terms under which the outstanding principal balance will increase at any time over the course of the loan because the regular periodic payments do not cover the full amount of interest due.⁴ In addition, a high-cost mortgage may not include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the consumer.⁵ A creditor may not engage in a pattern or practice of extending credit to consumers under high-cost mortgages based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.⁶ No creditor may impose a late payment charge or fee in connection with a high-cost mortgage⁷—

— in an amount in excess of 4% of the amount of the payment past due;

— unless the loan documents specifically authorize the charge or fee;

— before the end of the 15-day period beginning on the date the payment is due, or in the case of a loan on which interest on each installment is paid in advance, before the end of the 30-day period beginning on the date the payment is due; or

— more than once with respect to a single late payment.

If a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.⁸ If, in the case of a loan agreement the terms of which provide that any payment shall first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.⁹

No high-cost mortgage may contain a provision which permits the creditor to accelerate the indebtedness, except when repayment of the loan has been accelerated by default in payment, or pursuant to a due-on-sale provision, or pursuant to a material violation of some other provision of the loan document unrelated to payment schedule.¹⁰

A creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of Housing and Urban Development, or at the discretion of the Secretary, a state housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.¹¹

No creditor may directly or indirectly finance, in connection with any high-cost mortgage, any of the following: (1) Any prepayment fee or penalty payable by the consumer in a refinancing transaction if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced; (2) Any points or fees.¹² A creditor may not take any action in connection with a high-cost mortgage to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of the Truth in Lending Act or to divide any loan transaction into separate parts for the purpose and with the intent of evading provisions of the Act.¹³

A creditor may not make a payment to a contractor under a home improvement contract from amounts extended as credit under a high-cost mortgage other than in the form of an instrument that is payable to the consumer or jointly to the consumer and the contractor, or at the election of the consumer, by a third party escrow agent in accordance with terms established in a written agreement signed by the consumer, the creditor, and the contractor before the date of payment.¹⁴

Any mortgage that contains a provision prohibited by the statute shall be deemed a failure to deliver the material disclosures required.¹⁵ A creditor or assignee in a high-cost mortgage who, when acting in good faith, fails to comply with any requirement under the statute will not be deemed to have violated such requirement if the creditor or assignee establishes that either: (1) within 30 days of the loan closing and prior to the institution of any action, the consumer is notified of or discovers the violation, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer, make the loan satisfy the statutory requirements; or in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial to the consumer so that the loan will no longer be a high-cost mortgage; or (2) within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the consumer, make the loan satisfy the statutory requirements; or in the case of a high-cost mortgage, change the terms of the loan in a manner beneficial so that the loan will no longer be a high-cost mortgage.¹⁶

The Consumer Financial Protection Bureau may exempt specific mortgage products or categories of mortgage from the statutory requirements.¹⁷ The Bureau, by regulation or order, may prohibit acts or practices in connection with mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of the statute; and refinancing of mortgage loans that the Bureau finds to be associated with abusive lending practices or that are otherwise not in the interest of the borrower.¹⁸

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Footnotes

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|----|------------------------------|
| 1 | Discussed in § 223. |
| 2 | 15 U.S.C.A. § 1639(c)(1)(A). |
| 3 | 15 U.S.C.A. § 1639(e). |
| 4 | 15 U.S.C.A. § 1639(f). |
| 5 | 15 U.S.C.A. § 1639(g). |
| 6 | 15 U.S.C.A. § 1639(h). |
| 7 | 15 U.S.C.A. § 1639(k)(1). |
| 8 | 15 U.S.C.A. § 1639(k)(2). |
| 9 | 15 U.S.C.A. § 1639(k)(3). |
| 10 | 15 U.S.C.A. § 1639(l). |
| 11 | 15 U.S.C.A. § 1639(u)(1). |
| 12 | 15 U.S.C.A. § 1639(m). |
| 13 | 15 U.S.C.A. § 1639(r). |
| 14 | 15 U.S.C.A. § 1639(i). |
| 15 | 15 U.S.C.A. § 1639(n). |
| 16 | 15 U.S.C.A. § 1639(v). |
| 17 | 15 U.S.C.A. § 1639(p)(1). |
| 18 | 15 U.S.C.A. § 1639(p)(2). |

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§ 229. Residential mortgage loan origination

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West's Key Number Digest

West's Key Number Digest, [United States](#)  53(9)

A statutory provision governing residential mortgage loan origination¹ was enacted on Congress's finding that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit while ensuring that responsible, affordable mortgage credit remains available to consumers.² The purpose of the statute is to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.³ Under the statute, mortgage originators are required to be qualified and, when required, registered and licensed as a mortgage originator in accordance with applicable state or federal law, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, and include on all loan documents any unique identifier of the mortgage originator provided by the Nationwide Mortgage Licensing System and Registry.⁴ The statute contains a prohibition on steering incentives⁵ and a provision imposing liability for violation of the statute.⁶

Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such entity, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert the creditor's violation of the prohibition on steering incentives as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages.⁷

Regulations prohibit any person from making any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to specified misrepresentations.⁸

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008⁹ provides that in order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the states, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators are encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:¹⁰

- provides uniform license applications and reporting requirements for State-licensed loan originators
- provides a comprehensive licensing and supervisory database
- aggregates and improves the flow of information to and between regulators
- provides increased accountability and tracking of loan originators
- streamlines the licensing process and reduces the regulatory burden
- enhances consumer protections and supports antifraud measures
- provides consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators
- establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer
- facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending
- facilitates the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators

CUMULATIVE SUPPLEMENT

24 C.F.R. Pt. 3400 (24 C.F.R. §§ 3400.1 to 3400.405) was removed effective July 16, 2014, as part of the transfer of regulation under the Secure and Fair Enforcement for Mortgage Licensing Act (15 U.S.C.A. §§ 5101 to 5116) to the Consumer Financial Protection Bureau. As to the current similar provisions, see 12 C.F.R. Pt. 1007 (12 C.F.R. §§ 1007.101 to 1007.105), and 12 C.F.R. Pt. 1008 (12 C.F.R. §§ 1008.1 to 1008.405).

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Footnotes

- | | |
|---|------------------------------|
| 1 | 15 U.S.C.A. § 1639b. |
| 2 | 15 U.S.C.A. § 1639b(a)(1). |
| 3 | 15 U.S.C.A. § 1639b(a)(2). |
| 4 | 15 U.S.C.A. § 1639b(b). |
| 5 | 15 U.S.C.A. § 1639b(c). |
| 6 | 15 U.S.C.A. § 1639b(d). |
| 7 | 15 U.S.C.A. § 1640(k). |
| 8 | 12 C.F.R. § 1014.3. |
| 9 | 12 U.S.C.A. §§ 5101 to 5116. |

As to Regulation G implementing the S.A.F.E. Act's federal registration requirement for mortgage loan originators, see [12 C.F.R. §§ 1007.101 to 1007.105](#).

As to Regulation H which enhances consumer protection and reduce fraud by directing states to adopt minimum uniform standards for the licensing and registration of residential mortgage loan originators and to participate in a nationwide mortgage licensing system and registry database of residential mortgage loan originators, see [12 C.F.R. §§ 1008.1 to 1008.405](#).

As to regulations implementing HUD's responsibilities under the SAFE Act, see [24 C.F.R. §§ 3400.1 to 3400.405](#).

[12 U.S.C.A. § 5101](#).

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§ 230. Minimum standards for residential mortgage loans

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West's Key Number Digest

West's Key Number Digest, [United States](#) 53(9)

No creditor may make a residential mortgage loan unless the creditor makes a reasonable and good-faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.¹

If the creditor knows, or has reason to know, that one or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor must make a reasonable and good-faith determination, based on verified and documented information, that the consumer has a reasonable ability to repay the combined payments of all loans on the same dwelling according to the terms of those loans and all applicable taxes, insurance (including mortgage guarantee insurance), and assessments.²

A determination of a consumer's ability to repay a residential mortgage loan must include consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio or the residual income the consumer will have after paying nonmortgage debt and mortgage-related obligations, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan. A creditor must determine the ability of the consumer to repay using a payment schedule that fully amortizes the loan over the term of the loan.³

A creditor making a residential mortgage loan must verify amounts of income or assets that such creditor relies on to determine repayment ability, including expected income or assets, by reviewing the consumer's Internal Revenue Service Form W-2, tax

returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.⁴

The statute provides for an exemption with regard to certain refinancings⁵ and provides for determining a consumer's ability to repay nonstandard loans.⁶

Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such entity initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert the creditor's violation of the foregoing provisions as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages.⁷

The statute also prohibits certain prepayment penalties⁸ and single premium credit insurance.⁹ It also contains provisions regarding arbitration,¹⁰ mortgages with negative amortization,¹¹ and protection against loss of antideficiency protection.¹²

A creditor is required, in the case of a residential mortgage loan, to disclose prior to settlement or, in the case of a person becoming a creditor with respect to an existing residential mortgage loan, at the time such person becomes a creditor (1) the creditor's policy regarding the acceptance of partial payments and (2) if partial payments are accepted, how such payments will be applied to such mortgage and if such payments will be placed in escrow.¹³

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Footnotes

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|----|----------------------------|
| 1 | 15 U.S.C.A. § 1639c(a)(1). |
| 2 | 15 U.S.C.A. § 1639c(a)(2). |
| 3 | 15 U.S.C.A. § 1639c(a)(3). |
| 4 | 15 U.S.C.A. § 1639c(a)(4). |
| 5 | 15 U.S.C.A. § 1639c(a)(5). |
| 6 | 15 U.S.C.A. § 1639c(a)(6). |
| 7 | 15 U.S.C.A. § 1640(k). |
| 8 | 15 U.S.C.A. § 1639c(c). |
| 9 | 15 U.S.C.A. § 1639c(d). |
| 10 | 15 U.S.C.A. § 1639c(e). |
| 11 | 15 U.S.C.A. § 1639c(f). |
| 12 | 15 U.S.C.A. § 1639c(g). |
| 13 | 15 U.S.C.A. § 1639c(h). |

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§ 231. Reset of hybrid adjustable rate mortgages

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Definition:

Under the statute, the term "hybrid adjustable rate mortgage" means a consumer credit transaction secured by the consumer's principal residence with a fixed interest rate for an introductory period that adjusts or resets to a variable interest rate after such period.¹

During the one-month period that ends six months before the date on which the interest rate in effect during the introductory period of a hybrid adjustable rate mortgage adjusts or resets to a variable interest rate or, in the case of such an adjustment or resetting that occurs within the first six months after consummation of such loan, at consummation, the creditor or servicer of such loan must provide a written notice, separate and distinct from all other correspondence to the consumer, that includes the following:²

- any index or formula used in making adjustments to or resetting the interest rate and a source of information about the index or formula

- an explanation of how the new interest rate and payment would be determined, including an explanation of how the index was adjusted, such as by the addition of a margin
- a good-faith estimate, based on accepted industry standards, of the creditor or servicer of the amount of the monthly payment that will apply after the date of the adjustment or reset, and the assumptions on which this estimate is based
- a list of alternatives consumers may pursue before the date of adjustment or reset, and descriptions of the actions consumers must take to pursue these alternatives, including refinancing, renegotiation of loan terms, payment forbearances, and preforeclosure sales
- the names, addresses, telephone numbers, and Internet addresses of counseling agencies or programs reasonably available to the consumer that have been certified or approved and made publicly available by the Secretary of Housing and Urban Development or a state housing finance authority
- the address, telephone number, and Internet address for the state housing finance authority for the state in which the consumer resides

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Footnotes

- [1](#) [15 U.S.C.A. § 1638a\(a\).](#)
- [2](#) [15 U.S.C.A. § 1638a\(b\).](#)

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§ 232. Mortgage assistance relief providers

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West's Key Number Digest

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Regulation O,¹ as issued by the Bureau of Consumer Financial Protection, deals with mortgage assistance relief services, including prohibited representations,² required disclosures in commercial communications,³ and prohibition on the collection of advance payments and related disclosures.⁴ It also prohibits anyone from providing substantial assistance or support to another they know or consciously avoid knowing is engaged in a violation of Regulation O,⁵ imposes recordkeeping and compliance requirements,⁶ and provides that any Attorney General or other officer of a state authorized by the State to bring an action under Regulation O may do so pursuant to the 2009 Omnibus Appropriations Act.⁷

CUMULATIVE SUPPLEMENT

Cases:

Conduct of operators of businesses for assisting distressed home mortgagors, in falsely representing to mortgagors that operators were affiliated with the government, and that mortgagors' "trial payments" to operators were being held in trust for their lenders, violated Federal Trade Commission's (FTC) Mortgage Assistance Relief Services (MARS) rule prohibiting material misrepresentations. [12 C.F.R. § 1015.3](#). [Federal Trade Commission v. Lake](#), 181 F. Supp. 3d 692 (C.D. Cal. 2016).

[END OF SUPPLEMENT]

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Footnotes

- 1 [12 C.F.R. §§ 1015.1 to 1015.11.](#)
- 2 [12 C.F.R. § 1015.3.](#)
- 3 [12 C.F.R. § 1015.4.](#)
- 4 [12 C.F.R. § 1015.5.](#)
- 5 [12 C.F.R. § 1015.6.](#)
- 6 [12 C.F.R. § 1015.9.](#)
- 7 [12 C.F.R. § 1015.10.](#)

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§ 233. Home inspection counseling

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West's Key Number Digest

West's Key Number Digest, [United States](#)  53(9)

The Secretary of Housing and Urban Development must take such actions as necessary to inform potential homebuyers of the availability and importance of obtaining an independent home inspection.¹ Such actions must include:²

- (1) publication of the HUD/FHA form HUD 92564-CN entitled "For Your Protection: Get a Home Inspection," in both English and Spanish languages;
- (2) publication of the HUD/FHA booklet entitled "For Your Protection: Get a Home Inspection," in both English and Spanish languages;
- (3) development and publication of a HUD booklet entitled "For Your Protection—Get a Home Inspection" that does not reference FHA-insured homes, in both English and Spanish languages; and
- (4) publication of the HUD document entitled "Ten Important Questions To Ask Your Home Inspector," in both English and Spanish languages.

The Secretary must make these materials available for electronic access and, where appropriate, inform potential homebuyers of such availability through home purchase counseling public service announcements and toll-free telephone hotlines of the Department of Housing and Urban Development.³ The Secretary must give special emphasis to reaching first-time and low-income homebuyers with these materials and efforts⁴ and may periodically update and revise such materials as deemed appropriate.⁵

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- 1 12 U.S.C.A. § 1701x-1(a)(1).
- 2 12 U.S.C.A. § 1701x-1(a)(1).
- 3 12 U.S.C.A. § 1701x-1(a)(2).
- 4 12 U.S.C.A. § 1701x-1(a)(2).
- 5 12 U.S.C.A. § 1701x-1(a)(3).

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§ 234. Warnings to homeowners of mortgage foreclosure rescue scams

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West's Key Number Digest

West's Key Number Digest, [United States](#) 53(9)

Ten percent of amounts made available pursuant to appropriations for assistance with respect to housing for low- and moderate-income families must be used only for assistance to the Neighborhood Reinvestment Corporation for activities, in consultation with servicers of residential mortgage loans, to provide notice to borrowers under such loans who are delinquent with respect to payments due under such loans that makes such borrowers aware of the dangers of fraudulent activities associated with foreclosure.¹ The Neighborhood Reinvestment Corporation, in consultation with servicers of residential mortgage loans, must use the amounts provided to carry out activities to inform borrowers under residential mortgage loans:²

- (1) that the foreclosure process is complex and can be confusing;
- (2) that the borrower may be approached during the foreclosure process by persons regarding saving their home, and they should use caution in any such dealings;
- (3) that there are federal government and nonprofit agencies that may provide information about the foreclosure process, including the Department of Housing and Urban Development;
- (4) that they should contact their lender immediately, contact the Department of Housing and Urban Development to find a housing counseling agency certified by the Department to assist in avoiding foreclosure, or visit the Department's website regarding tips for avoiding foreclosure; and

(5) of the telephone number of the loan servicer or successor, the telephone number of the Department of Housing and Urban Development housing counseling line, and the Uniform Resource Locators (URLs) for the Department of Housing and Urban Development Web sites for housing counseling and for tips for avoiding foreclosure.

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Footnotes

- 1 [42 U.S.C.A. § 8108\(a\).](#)
- 2 [42 U.S.C.A. § 8108\(b\).](#)

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§ 235. Escrow or impound accounts relating to certain consumer credit transactions

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 33.1

Except as otherwise provided, a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open-end credit plan or a reverse mortgage, must establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, the statute.¹

No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open-end credit plan or a reverse mortgage, except when:²

- (1) any such impound, trust, or other type of escrow or impound account for such purposes is required by federal or state law;
- (2) a loan is made, guaranteed, or insured by a state or federal governmental lending or insuring agency;
- (3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount as specified; or
- (4) so required pursuant to regulation.

The statute allows for exemptions for specified creditors,³ provides for the duration⁴ and administration⁵ of mandatory escrow or impound accounts, mandates the disclosures required with regard to such accounts,⁶ and mandates the disclosure notice required for consumers who waive escrow services.⁷

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Footnotes

- | | |
|---|-------------------------|
| 1 | 15 U.S.C.A. § 1639d(a). |
| 2 | 15 U.S.C.A. § 1639d(b). |
| 3 | 15 U.S.C.A. § 1639d(c). |
| 4 | 15 U.S.C.A. § 1639d(d). |
| 5 | 15 U.S.C.A. § 1639d(g). |
| 6 | 15 U.S.C.A. § 1639d(h). |
| 7 | 15 U.S.C.A. § 1639d(j). |

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§ 236. Requirements for prompt crediting of home loan payments

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

In connection with a consumer credit transaction secured by a consumer's principal dwelling, no servicer may fail to credit a payment to the consumer's loan account as of the date of receipt except when a delay in crediting does not result in any charge to the consumer or in the reporting of negative information to a consumer reporting agency.¹ However, if a servicer specifies in writing requirements for the consumer to follow in making payments but accepts a payment that does not conform to the requirements, the servicer must credit the payment as of five days after receipt.²

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¹ 15 U.S.C.A. § 1639f(a).

² 15 U.S.C.A. § 1639f(b).

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§ 237. Requests for payoff amounts of home loan

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

A creditor or servicer of a home loan must sent an accurate payoff balance within a reasonable time, but in no case more than seven business days, after the receipt of a written request for such balance from or on behalf of the borrower.¹

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¹ [15 U.S.C.A. § 1639g.](#)

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§ 238. Property appraisal requirements

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

A creditor may not extend credit in the form of a higher-risk mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the statutory requirements.¹

An appraisal of property to be secured by a higher-risk mortgage does not meet the statutory appraisal requirement unless it is performed by a certified or licensed appraiser who conducts a physical property visit of the interior of the mortgaged property.² The statute requires a second appraisal under certain circumstances³ and requires a creditor to provide one copy of each appraisal conducted under these provisions in connection with a higher-risk mortgage to the applicant without charge and at least three days prior to the transaction closing date.⁴ At the time of the initial mortgage application, the applicant must be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant.⁵ The statute provides monetary liability for a creditor found to have willfully failed to obtain an appraisal as required.⁶

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Footnotes

- ¹ 15 U.S.C.A. § 1639h(a).
"Higher-risk mortgage" is defined by statute. 15 U.S.C.A. § 1639h(f).
For regulations setting forth appraisal requirements, see 12 C.F.R. §§ 34.201 to 34.203.
- ² 15 U.S.C.A. § 1639h(b)(1).

- 3 15 U.S.C.A. § 1639h(b)(2).
- 4 15 U.S.C.A. § 1639h(c).
- 5 15 U.S.C.A. § 1639h(d).
- 6 15 U.S.C.A. § 1639h(e).

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§ 239. Property appraisal requirements—Independence requirements

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  33.1

It is unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under the statute.¹ Acts or practices that violate appraisal independence include:²

- any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person, appraisal management company, firm, or other entity conducting or involved in an appraisal, or attempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser
- mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit
- seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction
- withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered when the appraisal report or services are provided for in accordance with the contract between the parties

The statute provides for exceptions,³ prohibits conflicts of interest,⁴ requires the reporting of appraisers who fail to comply with the Uniform Standards of Professional Appraisal Practice,⁵ and sets forth requirements as to the customary and reasonable fees for appraisal services.⁶

CUMULATIVE SUPPLEMENT

12 C.F.R. Pt. 34 Subpt. H (12 C.F.R. §§ 34.210 to 34.216), as added effective June 11, 2015, applies to states and to appraisal management companies (AMCs) providing appraisal management services in connection with consumer credit transactions secured by a consumer's principal dwelling or securitizations of those transactions, including appraiser panel (12 C.F.R. § 34.212), registration (12 C.F.R. § 34.214), and requirements for federally regulated appraisal management companies (12 C.F.R. § 34.215).

12 C.F.R. Pt. 225 Subpt. M (12 C.F.R. §§ 225.190 to 225.196), as added effective August 10, 2015, identifies which real estate related financial transactions require the services of an appraiser; prescribes which categories of federally related transactions must be appraised by a state-certified appraiser and which by a state-licensed appraiser; prescribes minimum standards for the performance of real estate appraisals (12 C.F.R. §§ 225.190 to 225.192); prescribes minimum requirements to be applied by participating states in the registration and supervision of appraisal management companies (AMCs) (12 C.F.R. §§ 225.194 to 225.195); and prescribes minimum requirements to be applied by participating states to report certain information concerning AMCs registered with the states to a national registry of AMCs (12 C.F.R. § 225.196).

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Footnotes

- | | |
|---|-------------------------|
| 1 | 15 U.S.C.A. § 1639e(a). |
| 2 | 15 U.S.C.A. § 1639e(b). |
| 3 | 15 U.S.C.A. § 1639c(c). |
| 4 | 15 U.S.C.A. § 1639e(d). |
| 5 | 15 U.S.C.A. § 1639e(e). |
| 6 | 15 U.S.C.A. § 1639e(i). |

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§ 240. Legal assistance for foreclosure-related issues

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West's Key Number Digest

West's Key Number Digest, [United States](#) 53(9)

The Secretary of Housing and Urban Development must establish a program for making grants for providing a full range of foreclosure legal assistance to low- and moderate-income homeowners and tenants related to home ownership preservation, home foreclosure prevention, and tenancy associated with home foreclosure.¹

The Secretary must allocate amounts made available for grants to state and local legal organizations (defined as those state and local organizations whose primary business or mission is to provide legal assistance) on the basis of a competitive process.² In allocating amounts, the Secretary must give priority consideration to state and local legal organizations that are operating in the 125 metropolitan statistical areas (as that term is defined by the Director of the Office of Management and Budget) with the highest home foreclosure rates.³

The statute specifies the uses to which state and local organizations may put financial assistance received pursuant to the statute⁴ and puts limitations on the distribution of assistance.⁵

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- ¹ 12 U.S.C.A. § 1701x-2(a).
- ² 12 U.S.C.A. § 1701x-2(b).
- ³ 12 U.S.C.A. § 1701x-2(c).

4 12 U.S.C.A. § 1701x-2(d).

5 12 U.S.C.A. § 1701x-2(e).

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§ 241. Defense to foreclosure

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  60 to 67

Notwithstanding any other provision of law, when a creditor, assignee, or other holder of a residential mortgage loan or anyone acting on behalf of such creditor, assignee, or holder, initiates a judicial or nonjudicial foreclosure of the residential mortgage loan, or any other action to collect the debt in connection with such loan, a consumer may assert a violation by a creditor of the prohibition on steering incentives,¹ or the requirement to determine ability to repay the mortgage,² as a matter of defense by recoupment or set off without regard for the time limit on a private action for damages.³

The amount of recoupment or set-off must equal the amount to which the consumer would be entitled for damages for a valid claim brought in an original action against the creditor, plus the costs to the consumer of the action, including a reasonable attorney's fee.⁴

Where such judgment is rendered after the expiration of the applicable time limit on a private action for damages, the amount of recoupment or set-off derived from damages for violation of certain provisions may not exceed the amount to which the consumer would have been entitled for damages computed up to the day preceding the expiration of the applicable time limit.⁵

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Footnotes

¹ [§ 229.](#)

² [§ 230.](#)

- 3 15 U.S.C.A. § 1640(k)(1).
As to the time limit on a private action for damages, see § 129.
- 4 15 U.S.C.A. § 1640(k)(2)(A).
As to the amount of statutory damages, see §§ 136, 137.
- 5 15 U.S.C.A. § 1640(k)(2)(B).

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§ 242. Exemption from liability and rescission in case of borrower fraud or deception

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  60 to 67

In addition to any other remedy available by law or contract, no creditor or assignee will be liable to an obligor for civil liability based on credit transactions under the Truth in Lending Act if such obligor, or co-obligor has been convicted of obtaining by actual fraud such residential mortgage loan.¹

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¹ [15 U.S.C.A. § 1640\(l\)](#).

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§ 243. Notice required by new creditor

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  63

In addition to other required consumer credit disclosures,¹ not later than 30 days after the date on which a mortgage loan is sold or otherwise transferred or assigned to a third party, the creditor that is the new owner or assignee of the debt must notify the borrower in writing of such transfer, including:²

- the identity, address, telephone number of the new creditor
- the date of transfer
- how to reach an agent or party having authority to act on behalf of the new creditor
- the location of the place where transfer of ownership of the debt is recorded
- any other relevant information regarding the new creditor

Definition:

The term "mortgage loan" means any consumer credit transaction that is secured by the principal dwelling of a consumer.³



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- 1 As to disclosures required by the Truth In Lending Act, see §§ [15](#) to [89](#).
- 2 [15 U.S.C.A. § 1641\(g\)\(1\)](#).
- 3 [15 U.S.C.A. § 1641\(g\)\(2\)](#).

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Research References

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#) 🔑 163, 224, 271

A.L.R. Library

A.L.R. Index, Consumer Protection

A.L.R. Index, Telemarketing

West's A.L.R. Digest, [Antitrust and Trade Regulation](#) 🔑 163, 224, 271

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§ 244. Finding, enactment, promulgation, and validity

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West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Congress has made the finding that it should enact legislation that will offer consumers necessary protection from telemarketing deception and abuse¹ and consequently enacted the Telemarketing and Consumer Fraud and Abuse Prevention Act.²

Under the Act,³ the Federal Trade Commission (FTC) is required to and has prescribed Telemarketing Sales Rules prohibiting deceptive telemarketing acts or practices⁴ and other abusive telemarketing acts or practices.⁵

FTC rules imposing restrictions on activities of professional telemarketers who solicit charitable contributions on behalf of nonprofit organizations are not content-based restrictions subject to strict scrutiny under the First Amendment, even though they exempt financial institutions, common carriers, and nonprofit organizations, and do not purport to regulate political fundraising.⁶ FTC rules prohibiting most commercial telemarketers from calling numbers on the national "do-not-call" registry do not violate the telemarketers' First Amendment free speech rights, even though the rules do not apply to charitable and political callers, since the registry's opt-in character ensures that it does not inhibit any speech directed at a willing listener.⁷

CUMULATIVE SUPPLEMENT

Cases:

Under traditional severability principles, government debt-collection exception to Telephone Consumer Protection Act's (TCPA) restriction on robocalls to cell phones, which impermissibly favored debt-collection speech over political and other speech in violation of First Amendment, was severable from underlying robocall restriction; TCPA was part of Communications Act, which contained an express severability clause that squarely covered the unconstitutional exception, presumption of severability

still would have applied even if that clause did not apply to the exception, severing the exception cured the unequal treatment at issue, and, with the exception severed, remainder of the law was capable of functioning independently and would be fully operative as a law, as it had been for 20-plus years before the exception was added. (Per Justice Kavanaugh, with two Justices concurring and four Justices concurring in the judgment.) [U.S. Const. Amend. 1](#); Communications Act of 1934 §§ 227, 708, [47 U.S.C.A. §§ 227\(b\)\(1\)\(A\)\(iii\)](#), 608. [Barr v. American Association of Political Consultants, Inc.](#), 140 S. Ct. 2335 (2020).

Residential telephone subscriber sufficiently pled plausible claim of vicarious liability against health care and lifestyle discount program providers and their sales administrator through chain of agent and subagent relationships based on theory of implied actual authority in her action asserting that telemarketer's robocalls promoting programs violated Telephone Consumer Protection Act (TCPA), by alleging that sales administrator had authority from providers to administer sales and solicitation of sales of their products, that administrator provided scripts and pricing information to sales agents and advanced cost of sales agents' telemarketing efforts, and that sales agents retained telemarketer to promote programs. Communications Act of 1934 § 227, [47 U.S.C.A. § 227](#). [Bilek v. National Congress of Employers, Inc.](#), 470 F. Supp. 3d 857 (N.D. Ill. 2020).

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Footnotes

- 1 [15 U.S.C.A. § 6101\(5\)](#).
As to the federal Senior Citizens Against Marketing Scams Act, see [Am. Jur. 2d, Telecommunications § 198](#).
- 2 [15 U.S.C.A. §§ 6101 to 6108](#).
- 3 [15 U.S.C.A. § 6102\(a\)\(1\)](#).
- 4 [§ 246](#).
- 5 [§ 247](#).
- 6 [National Federation of Blind v. F.T.C.](#), 303 F. Supp. 2d 707 (D. Md. 2004), judgment *aff'd*, 420 F.3d 331, 40 A.L.R. Fed. 2d 721 (4th Cir. 2005).
- 7 [Mainstream Marketing Services, Inc. v. F.T.C.](#), 358 F.3d 1228 (10th Cir. 2004).

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§ 245. What constitutes telemarketing or telemarketer

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Definition:

As used in the Telemarketing and Consumer Fraud and Abuse Prevention Act,¹ the term "telemarketing" means a plan, program, or campaign which is conducted to induce purchases of goods or services, or a charitable contribution, donation, or gift of money or any other thing of value, by use of one or more telephones and which involves more than one interstate telephone call. The term does not include the solicitation of sales through the mailing of an annual catalog meeting certain criteria.²

The Act does not apply to an Internet search engine, simply because it connects to the Internet via telephone lines.³

A provider of automated telephone services was a "telemarketer," under the Federal Trade Commission (FTC) Telemarketing Sales Rule, despite a claim that the provider simply placed calls at the direction of a charity that was its customer.⁴

An author provided substantial assistance to telemarketing companies that engaged in deceptive telemarketing practices, as required to support a determination that the author violated the FTC's Telemarketing Sales Rule, where the author coauthored a book that was sold in the first stage of a deceptive telemarketing scheme; provided the research results, often flawed, that were marketed in the second stage of the scheme; and wrote grant applications and developed a workshop marketed in the third stage of the scheme.⁵

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Footnotes

- 1 § 244.
- 2 15 U.S.C.A. § 6106(4).
- 3 800-JR Cigar, Inc. v. GoTo.com, Inc., 437 F. Supp. 2d 273 (D.N.J. 2006).
- 4 The Broadcast Team, Inc. v. F.T.C., 429 F. Supp. 2d 1292 (M.D. Fla. 2006).
- 5 F.T.C. v. Chapman, 714 F.3d 1211 (10th Cir. 2013).

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VIII. Telemarketing Consumer Fraud and Abuse Prevention

§ 246. Deceptive telemarketing acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

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[Validity, Construction, and Application of Telemarketing Sales Rule, 16 C.F.R. ss310.1 et seq., Promulgated by Federal Trade Commission, 40 A.L.R. Fed. 2d 311](#)

Under the Telemarketing and Consumer Fraud and Abuse Prevention Act,¹ the Federal Trade Commission (FTC) has prescribed rules making it a deceptive telemarketing act or practice and a violation of the FTC Telemarketing Sales Rule (TSR) for any seller or telemarketer to—

- fail to disclose truthfully in a clear and conspicuous manner, before a customer pays for goods or services offered, the specified material information.²
- misrepresent, directly or by implication, in the sale of goods or services specified material information.³
- cause billing information to be submitted for payment or collect or attempt to collect payment for goods or services or a charitable contribution, directly or indirectly, without the customer's or donor's express verifiable authorization, except when the method of payment used is a credit card subject to protections of the Truth in Lending Act and Regulation Z or a debit card subject to the protections of the Electronic Fund Transfer Act and Regulation E.⁴

— assist and facilitate a violation of the rule.⁵

— engage in credit card laundering.⁶

— engage in fraudulent charitable solicitation.⁷

CUMULATIVE SUPPLEMENT

Cases:

Social networking website's express representations that a \$30 membership would allow users to contest and potentially remove negative reviews on their profile pages was a material misrepresentation in violation of the Federal Trade Commission (FTC) Act; consumers and FTC investigators who had paid the membership fee received no communication from the site, and there was no evidence that the site provided even one paid member the opportunity to contest information on a profile page. Federal Trade Commission Act, § 5(a)(2), 15 U.S.C.A. § 45(a)(2). *Fanning v. Federal Trade Com'n*, 821 F.3d 164 (1st Cir. 2016).

Genuine issues of material fact as to how much the value of consumer's call-blocking equipment was diminished and resale value of his phone equipment precluded summary judgment on damages element of consumer's Illinois Consumer Fraud and Deceptive Trade Practices Act (ILCFA) claim based on allegations that telemarketer made unsolicited junk calls containing fraudulent caller ID information for purposes of scam marketing and to collect dip fees associated with the calls. 815 Ill. Comp. Stat. Ann. 505/1 et seq. *Spiegel v. EngageTel Inc.*, 372 F. Supp. 3d 672 (N.D. Ill. 2019).

Genuine issues of material fact regarding accuracy of Internet websites' representations and testimonials regarding amount of income that consumers were likely to earn, from website operators' products for money-making opportunities through search engine advertisements, precluded summary judgment for Federal Trade Commission (FTC), in action alleging violation of Federal Trade Commission Act's (FTC Act) prohibition of deceptive acts or practices. Federal Trade Commission Act, § 5(a), 15 U.S.C.A. § 45(a). *F.T.C. v. Johnson*, 96 F. Supp. 3d 1110 (D. Nev. 2015).

Satellite television provider's conduct of calling telephone numbers purchased by marketer for purposes of routing potential satellite sales to third-party retailers 175 times over a six-year period by using false names, was not "deceptive" within meaning of North Carolina's Unfair and Deceptive Practices Act (UDPA); conduct may have been misleading but was not accompanied by egregious or aggravating circumstances, and instead, use of pseudonyms was critical to provider's goal of investigating extent of marketer's willful infringement of provider's trademark and identifying retailers affected by marketer's infringement. West's N.C.G.S.A. § 75-1.1; Lanham Act, § 32, 15 U.S.C.A. § 1114. *Exclaim Marketing, LLC v. DirecTV, LLC*, 134 F. Supp. 3d 1011 (E.D. N.C. 2015).

Genuine issue of material fact as to whether group of telemarketers made misleading statements during campaigns to solicit contributions for police and firefighter organizations precluded summary judgment on government's claim that group violated Federal Trade Commission Act (FTCA) provision prohibiting deceptive statements. Federal Trade Commission Act, § 5(a)(1), 15 U.S.C.A. § 45(a)(1). *U.S. v. Corporations for Character, L.C.*, 116 F. Supp. 3d 1258 (D. Utah 2015).

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Footnotes

1 § 244.

2 16 C.F.R. § 310.3(a)(1).

A telemarketer's failure to disclose purchaser's automatic enrollment in a continuity program after a trial period violated the rule. [F.T.C. v. John Beck Amazing Profits, LLC](#), 865 F. Supp. 2d 1052 (C.D. Cal. 2012), subsequent determination, 888 F. Supp. 2d 1006 (C.D. Cal. 2012).

Telemarketing sellers violated the rule by making false claims to consumers that they would receive "guaranteed" government grants, that the sellers had achieved high success rates in obtaining grant money, and that consumers were likely to receive grant money if they bought the sellers' goods or services. [F.T.C. v. Affiliate Strategies, Inc.](#), 849 F. Supp. 2d 1085 (D. Kan. 2011), subsequent determination, 2011 WL 3300097 (D. Kan. 2011).

3 16 C.F.R. § 310.3(a)(2).

A telemarketing scheme that led consumers to believe they would receive a credit card in exchange for a one-time fee, but instead provided a "stored value card" for preloading funds, was deceptive trade practice violating the Telemarketing Sales Rule. [F.T.C. v. Bay Area Business Council, Inc.](#), 423 F.3d 627 (7th Cir. 2005).

4 16 C.F.R. § 310.3(a)(3).

5 16 C.F.R. § 310.3(b).

6 16 C.F.R. § 310.3(c); 15 U.S.C.A. § 6102(2).

7 16 C.F.R. § 310.3(d).

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§ 247. Abusive telemarketing acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

A.L.R. Library

[Validity, Construction, and Application of Telemarketing Sales Rule, 16 C.F.R. ss310.1 et seq., Promulgated by Federal Trade Commission, 40 A.L.R. Fed. 2d 311](#)

The Telemarketing and Consumer Fraud and Abuse Prevention Act¹ directs the Federal Trade Commission (FTC) on the content of its rules respecting abusive telemarketing acts or practices.² As required, the FTC prescribed rules making it an abusive telemarketing act or practice and a violation of the FTC Telemarketing Sales Rule (TSR) for any seller or telemarketer to³—

- use threats, intimidation, or profane or obscene language.
- request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until such time as provided.
- request or receive payment of any fee or consideration from a person for goods or services represented to recover or otherwise assist in the return of money or any other item of value paid for by, or promised to, that person in a previous telemarketing transaction, until seven business days after such money or other item is delivered to that person.

- request or receive payment of any fee or consideration in advance of obtaining a loan or other extension of credit when the seller or telemarketer has guaranteed or represented a high likelihood of success in obtaining or arranging a loan or other extension of credit for a person.
- request or receive payment of any fee or consideration for any debt relief service until and unless the prescribed steps are taken and criteria are met.
- disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing.
- cause billing information to be submitted for payment, directly or indirectly, without the express informed consent of the customer or donor.
- fail to transmit or cause to be transmitted the telephone number and, when made available by the telemarketer's carrier, the name of the telemarketer to any caller identification service in use by a recipient of a telemarketing call.

A seller "causes" a telemarketer to violate the TSR against abusive telemarketing if the seller takes an action that results in the telemarketer's violation of the TSR, without an express limitation on the degree of connection between the action and the violation, and without regard to motive or intent.⁴ A corporation and its director were "sellers" under the TSR, although all telemarketing on behalf of the corporation was performed by an outside company since the director entered into an agreement with the outside company to conduct telemarketing and sales on behalf of the corporation.⁵

A telemarketer violates the TSR by causing consumers' billing information to be submitted for payment without disclosing automatic charges to consumers for a continuity program following a free trial period.⁶

CUMULATIVE SUPPLEMENT

Cases:

Federal Trade Commission (FTC) had reason to believe that alleged violations of the FTC Act by participants of alleged deceptive telemarketing scheme were ongoing or likely to continue in the future absent restraint, as required for the FTC to obtain preliminary injunction pursuant to the Act prohibiting participants from making misrepresentations to consumers, violating the Telemarketing Sales Rule (TSR), and releasing consumer data; FTC showed wide-spread and organized fraudulent scheme based on deceptive business practices, FTC showed that the scheme's allegedly unlawful payment processing was continuing in months and weeks leading up to original complaint's filing, and participants remained active corporations and maintained active bank accounts when FTC filed suit. Federal Trade Commission Act § 13, [15 U.S.C.A. § 53\(b\)](#). [Federal Trade Commission v. Educare Centre Services, Inc., 433 F. Supp. 3d 1008 \(W.D. Tex. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 [§ 244.](#)
- 2 [15 U.S.C.A. § 6102\(3\).](#)
- 3 [16 C.F.R. § 310.4\(a\)\(1\) to \(8\).](#)
- 4 [U.S. v. Dish Network, L.L.C., 667 F. Supp. 2d 952 \(C.D. Ill. 2009\).](#)
- 5 [F.T.C. v. Stefanchik, 559 F.3d 924 \(9th Cir. 2009\).](#)

6 [F.T.C. v. John Beck Amazing Profits, LLC, 865 F. Supp. 2d 1052 \(C.D. Cal. 2012\)](#), subsequent determination, [888 F. Supp. 2d 1006 \(C.D. Cal. 2012\)](#).

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§ 248. Abusive telemarketing acts or practices—Pattern of calls

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

The Federal Trade Commission (FTC) Telemarketing Sales Rule (TSR) defining an abusive telemarketing act or practice¹ sets out when a pattern of calls constitutes an abusive telemarketing act or practice,² specifically including any outbound telephone call to a person who has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller,³ or when that person's telephone number is on the "do-not-call" registry, maintained by the FTC, subject to an express written agreement with the seller or an established business relationship absent a statement that the person does not wish to receive outbound telephone calls.⁴

Observation:

Under the TSR safe harbor provisions, if a seller or telemarketer uses a current version of the do-not-call list, has written procedures for compliance with the TSR, and monitors and enforces compliance with the TSR and the written procedures, a call that violates the TSR made in error will not result in liability—the contrary implication is that one not in compliance with the safe harbor provisions is liable for a violation.⁵

The TSR also addresses what constitutes abandoning an outbound call⁶ and limits the use or duration of outbound calls delivering a prerecorded message.⁷

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Footnotes

- 1 § 247.
- 2 16 C.F.R. § 310.4(b).
- 3 16 C.F.R. § 310.4(b)(1)(iii)(A).
- 4 16 C.F.R. § 310.4(b)(1)(iii)(B).
- The FTC has statutory authority to promulgate the Rule. [Mainstream Marketing Services, Inc. v. F.T.C.](#), 358 F.3d 1228 (10th Cir. 2004).
- 5 [U.S. v. Dish Network, L.L.C.](#), 667 F. Supp. 2d 952 (C.D. Ill. 2009).
- A telemarketer violated the "do not call" provision of the TSR by repeatedly initiating telephone calls to consumers who previously had asked not to be contacted. [F.T.C. v. John Beck Amazing Profits, LLC](#), 865 F. Supp. 2d 1052 (C.D. Cal. 2012), subsequent determination, 888 F. Supp. 2d 1006 (C.D. Cal. 2012).
- 6 16 C.F.R. § 310.4(b)(1)(iv).
- The "abandoned call" rule is not ambiguous and is clearly and consistently interpreted by the FTC. [F.T.C. v. Asia Pacific Telecom, Inc.](#), 802 F. Supp. 2d 925 (N.D. Ill. 2011).
- 7 16 C.F.R. § 310.4(b)(1)(v).
- The FTC Rule is within the scope of the Congressional grant of authority and is not vague. [The Broadcast Team, Inc. v. F.T.C.](#), 429 F. Supp. 2d 1292 (M.D. Fla. 2006).

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§ 249. Exempt acts or practices

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Under the Telemarketing and Consumer Fraud and Abuse Prevention Act,¹ the Federal Trade Commission (FTC) Telemarketing Sales Rule (TSR) exempts solicitations to induce charitable contributions via outbound telephone calls for restrictions based on the "do-not-call" registry.² Specified acts and practices are exempt from the TSR.³

The test of a business-to-business exemption is not subjective, resting merely on whether telemarketers subjectively intend calls to be made to a business.⁴ A seller of magazine subscriptions placing telemarketing calls directly to businesses, did not qualify for the business-to-business exemption since the seller sold subscriptions to an individual consumer rather than to the "business" itself.⁵

Caution:

There is no de minimis exception to violations of the TSR.⁶

Footnotes

- 1 § 244.
- 2 16 C.F.R. § 310.6(a).
- 3 16 C.F.R. § 310.6(b).
- 4 F.T.C. v. Inc21.com Corp., 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff'd*, 475 Fed. Appx. 106 (9th Cir. 2012).
- 5 F.T.C. v. Publishers Business Services, Inc., 821 F. Supp. 2d 1205 (D. Nev. 2010).
- 6 F.T.C. v. Inc21.com Corp., 745 F. Supp. 2d 975 (N.D. Cal. 2010), *aff'd*, 475 Fed. Appx. 106 (9th Cir. 2012).

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§ 250. Enforcement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Any violation of any rule prescribed by the Federal Trade Commission (FTC) pursuant to the rule-making provision of the Telemarketing and Consumer Fraud and Abuse Prevention Act (Telemarketing Act)¹ (1) must be treated as a violation of a rule under the rule-making provision² regarding unfair or deceptive acts or practices;³ and (2) must be treated as a violation of a rule under the Consumer Financial Protection Act of 2010 (CFPA)⁴ regarding unfair, deceptive, or abusive acts or practices, as to a violation committed by a person subject to the CFPA.⁵

The provisions related to telemarketing and consumer fraud and abuse prevention are enforceable by the FTC⁶ under the Federal Trade Commission Act (FTCA)⁷ except as provided for enforcement by the Bureau of Consumer Financial Protection under the CFPA⁸ with respect to the offering or provision of a consumer financial product or service subject to the CFPA.⁹

The FTC will prevent any person from violating an FTC rule related to deceptive or abusive telemarketing acts or practices in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the FTCA were incorporated into and made a part of the Telemarketing Act, and any person who violates a rule is subject to the penalties and entitled to the privileges and immunities provided in the FTCA.¹⁰

Observation:

Identical principles of deception from the FTCA apply to the Telemarketing Sales Rule (TSR), and a violation of the TSR amounts to both a deceptive act or practice and a violation of the FTCA.¹¹

Subject to statutory limitations, the FTC may bring a criminal contempt action for violations of orders of the FTC obtained in cases brought seeking specified injunctive relief.¹²

CUMULATIVE SUPPLEMENT

Cases:

Permanent injunction requiring principals of telemarketing corporations to transfer to receiver possession, custody, and control of 53 items of jewelry was justified, after they violated FTC Act and Telemarketing Sales Rule (TSR) by engaging in telemarketing scheme involving tens of millions of robocalls and calls by live sales agents making false representations and threats to sell, for significant fees, otherwise free internet claiming and verification services or search engine optimization service; although principals denied they possessed jewelry, FTC supplied receipts showing that principal purchased jewelry, which corroborated adverse inference that could be drawn from principals' invocation of Fifth Amendment when questioned about jewelry at their depositions. [U.S. Const. Amend. 5](#); [Federal Trade Commission Act §§ 5, 13](#), [15 U.S.C.A. §§ 45\(a\)\(1\), 53\(b\)](#); [16 C.F.R. § 310.4\(b\)](#). [Federal Trade Commission v. Pointbreak Media, LLC](#), 376 F. Supp. 3d 1257 (S.D. Fla. 2019).

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Footnotes

- | | |
|----|---|
| 1 | 15 U.S.C.A. § 6102(a) . |
| 2 | 15 U.S.C.A. § 57a . |
| 3 | 15 U.S.C.A. § 6102(c)(1) . |
| 4 | § 253 . |
| 5 | 15 U.S.C.A. § 6102(c)(2) . |
| 6 | 15 U.S.C.A. § 6105(a) . |
| 7 | 15 U.S.C.A. §§ 41 et seq. |
| 8 | § 253 . |
| 9 | 15 U.S.C.A. § 6105(d) . |
| 10 | 15 U.S.C.A. § 6105(b) . |
| 11 | F.T.C. v. Washington Data Resources , 856 F. Supp. 2d 1247 (M.D. Fla. 2012), order aff'd, 704 F.3d 1323 (11th Cir. 2013). |
| 12 | 15 U.S.C.A. § 6107 . |

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VIII. Telemarketing Consumer Fraud and Abuse Prevention

§ 251. Enforcement—State enforcement

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Forms

Forms relating to injunction against telemarketer, see Am. Jur. Pleading and Practice Forms—Injunctions [[Westlaw® Search Query](#)]

A state may bring a civil action on behalf of its residents because any person has engaged or is engaging in a pattern or practice of telemarketing which violates any rule of the Federal Trade Commission (FTC) under the Telemarketing and Consumer Fraud and Abuse Prevention Act, seeking an injunction, to enforce compliance with the rule, to obtain damages, restitution, or other compensation on behalf of the state's residents, or to obtain further and other relief as the court may deem appropriate.¹

Caution:

The State may not institute such a civil action when one has been instituted by or on behalf of the FTC or the Bureau of Consumer Financial Protection as against any defendant named in the complaint for a violation alleged in the complaint.²

A state is required to serve prior written notice on the FTC of any civil action and provide the FTC with a copy of its complaint unless prior notice is not feasible and the State must serve notice immediately on instituting the action.³ Upon receiving the notice, the FTC has the right to intervene and be heard on all matters arising in the action and to file petitions for appeal.⁴

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| 1 | 15 U.S.C.A. § 6103(a). |
| 2 | 15 U.S.C.A. § 6103(d). |
| 3 | 15 U.S.C.A. § 6103(b). |
| 4 | 15 U.S.C.A. § 6103(b). |

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§ 252. Private cause of action

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West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  163, 224, 271

Any person adversely affected by any pattern or practice of telemarketing which violates any rule of the Federal Trade Commission (FTC) prescribed by the Telemarketing and Consumer Fraud and Abuse Prevention Act, or an authorized person acting on such person's behalf may, within three years after discovery of the violation, bring a civil action in an appropriate district court of the United States against a person who has engaged or is engaging in such pattern or practice of telemarketing if the amount in controversy exceeds a specified amount in actual damages for each person adversely affected by such telemarketing.¹ The action may be brought to enjoin the telemarketing, to enforce compliance with any rule of the FTC, to obtain damages, or to obtain such further and other relief as the court may deem appropriate.²

The plaintiff is required to serve prior written notice of the action upon the FTC and provide the FTC with a copy of its complaint unless prior notice is not feasible and the person must serve notice immediately on instituting such action.³ The FTC has the right to intervene in the action, and upon so intervening, to be heard on all matters arising therein, and to file petitions for appeal.⁴

Caution:

Whenever a civil action has been instituted by or on behalf of the FTC or on behalf of the FTC or the Bureau of Consumer Financial Protection for violation of any rule prescribed under the designated section, no person may, during the pendency of such action institute a civil action against any defendant named in the complaint for violation of any rule as alleged in such complaint.⁵

The court, in issuing any final order in any private cause of action, may award costs of suit and reasonable fees for attorneys and expert witnesses to the prevailing party.⁶

The provisions providing for the private cause of action do not restrict any right which any person may have under any statute or common law.⁷

CUMULATIVE SUPPLEMENT

29 C.F.R. Pt. 1985 (29 C.F.R. §§ 1985.100 to 1985.115), as added effective April 3, 2014, establishes procedures under the Consumer Financial Protection Act (12 U.S.C.A. § 5567) for the expeditious handling of retaliation complaints filed by employees or by persons acting on their behalf, including complaints, investigations and preliminary orders (29 C.F.R. §§ 1985.100 to 1985.105), litigation (29 C.F.R. §§ 1985.106 to 1985.110), and judicial review (29 C.F.R. §§ 1985.112 to 1985.114)

Cases:

Named plaintiffs had standing to pursue claims for injunctive relief on behalf of class of mortgagors, in action against mortgage loan servicing company alleging that company made debt-collection calls to their cell phones using an autodialer in violation of the Telephone Consumer Protection Act (TCPA); despite fact that company had ceased calling named plaintiffs, one of the named plaintiffs possessed live claim at time she joined original plaintiff's lawsuit, other members of proposed class continued to receive phone calls from company, and company remained free to resume unlawful conduct at any time. Communications Act of 1934 § 227, 47 U.S.C.A. § 227. *Snyder v. Ocwen Loan Servicing, LLC*, 258 F. Supp. 3d 893 (N.D. Ill. 2017).

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Footnotes

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|---|------------------------|
| 1 | 15 U.S.C.A. § 6104(a). |
| 2 | 15 U.S.C.A. § 6104(a). |
| 3 | 15 U.S.C.A. § 6104(b). |
| 4 | 15 U.S.C.A. § 6104(b). |
| 5 | 15 U.S.C.A. § 6104(c). |
| 6 | 15 U.S.C.A. § 6104(d). |
| 7 | 15 U.S.C.A. § 6104(e). |

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IX. Consumer Financial Protection

§ 253. Establishment of agencies, offices, and funds

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Antitrust and Trade Regulation](#)  209

The Consumer Financial Protection Act of 2010 (CFPA)¹ establishes the Bureau of Consumer Financial Protection within the Federal Reserve System.² Within the Bureau, the CFPA authorizes or establishes the Office of Fair Lending and Equal Opportunity,³ the Office of Financial Education,⁴ the Consumer Advisory Board,⁵ and a Private Education Loan Ombudsman.⁶ In addition, the CFPA establishes separate funds in the Federal Reserve to be maintained and established at a Federal Reserve Bank, including the Bureau of Consumer Financial Protection Fund,⁷ and the Consumer Financial Civil Penalty Fund.⁸

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Footnotes

- | | |
|---|------------------------------|
| 1 | 12 U.S.C.A. §§ 5481 to 5603. |
| 2 | 12 U.S.C.A. § 5491(a). |
| 3 | 12 U.S.C.A. § 5493(c)(1). |
| 4 | 12 U.S.C.A. § 5493(d)(1). |
| 5 | 12 U.S.C.A. § 5494(a). |
| 6 | 12 U.S.C.A. § 5535. |
| 7 | 12 U.S.C.A. § 5497(b), (c). |
| 8 | 12 U.S.C.A. § 5497(d). |

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IX. Consumer Financial Protection

§ 254. General purpose, objectives, and functions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

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Under the Consumer Financial Protection Act of 2010 (CFPA),¹ the Bureau of Consumer Financial Protection (Bureau) is authorized to establish its general policies with respect to all executive and administrative functions, particularly implementing the federal consumer financial laws and performing such other functions as may be authorized or required by law.² The purpose of the Bureau is to seek to implement and, where applicable, enforce federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.³

The objectives of the Bureau are, generally, to provide consumers with timely and understandable information to make responsible decisions about financial transactions, to protect consumers from unfair, deceptive, or abusive acts and practices and discrimination and to see that markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.⁴

The Bureau's primary functions are: (1) conducting financial education programs; (2) collecting, investigating, and responding to consumer complaints; (3) collecting, researching, monitoring, and publishing information relevant to the functioning of markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets; (4) supervising covered persons for compliance with federal consumer financial law, and taking appropriate enforcement action to address violations of federal consumer financial law; (5) issuing rules, orders, and guidance implementing federal consumer financial law; and (6) performing such support activities as may be necessary or useful to facilitate the other functions of the Bureau.⁵ The Bureau has the authority to restrict mandatory predispute arbitration of disputes between consumers and specified entities in connection with the offering or providing of consumer financial products or services.⁶

The CFPA defines related purposes, objectives, and functions for the Office of Fair Lending and Equal Opportunity,⁷ the Office of Financial Education,⁸ the Consumer Advisory Board,⁹ the Bureau of Consumer Financial Protection Fund,¹⁰ the Consumer Financial Civil Penalty Fund,¹¹ and the Private Education Loan Ombudsman.¹²

CUMULATIVE SUPPLEMENT

Statutes:

12 C.F.R. Pt. 1040 (12 C.F.R. §§ 1040.1 to 1040.5), as added effective September 18, 2017, provides protection for consumers (12 C.F.R. § 1040.3) regarding the use of agreements (12 C.F.R. § 1040.4) for consumer financial products and services providing for arbitration of any future dispute, and also to monitor for risks to consumers in the offering or provision of consumer financial products or services, including developments in markets for such products or services.

12 C.F.R. Pt. 1040 (12 C.F.R. §§ 1040.1 to 1040.5) was removed effective November 22, 2017. See [Public Law 115-74](#), nullifying the arbitration agreements rule under the Congressional Review Act (5 U.S.C.A. §§ 801 et seq). See also 12 C.F.R. Pt. 1041 (12 C.F.R. §§ 1041.1 to 1041.14), promulgated effective January 16, 2018, to identify certain unfair and abusive acts or practices in connection with certain consumer credit transactions and to set forth requirements for preventing such acts or practices, and prescribing requirements to ensure that the features of those consumer credit transactions are fully, accurately, and effectively disclosed to consumers.

Cases:

For-cause removal-protection provision of Dodd-Frank Wall Street Reform and Consumer Protection Act was severable from other provisions of Dodd-Frank that established the Consumer Financial Protection Bureau (CFPB), upon court's determination that removal-protection provision violated constitutional separation of powers because the single individual who ran the independent agency could not be removed by the President except for inefficiency, neglect, or malfeasance, and thus, CFPB could continue to operate, but its Director would be removable by the President at will; Dodd-Frank's other provisions bearing on CFPB's structure and duties remained fully operative without the offending tenure restriction, nothing in Dodd-Frank's text or history demonstrated that Congress would have preferred no CFPB to a CFPB supervised by the President, and the Act contained an express severability clause. (Per Chief Justice Roberts, with two justices concurring and four justices concurring in the judgment.) [U.S. Const. art. 2, § 1, cl. 1](#); [U.S. Const. Art. 2, § 3](#); [12 U.S.C.A. §§ 5302, 5491\(c\)\(3\)](#). [Seila Law LLC v. Consumer Financial Protection Bureau](#), 140 S. Ct. 2183 (2020).

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Footnotes

- 1 [§ 254.](#)
- 2 [12 U.S.C.A. § 5492\(a\).](#)
- 3 [12 U.S.C.A. § 5511\(a\).](#)
- 4 [12 U.S.C.A. § 5511\(b\).](#)
- 5 [12 U.S.C.A. § 5511\(c\).](#)
Procedures for the Bureau are established by regulation. [12 C.F.R. §§ 1073.101 to 1073.501.](#)
- 6 [12 U.S.C.A. § 5518.](#)
- 7 [12 U.S.C.A. § 5493\(c\)\(2\).](#)

- 8 12 U.S.C.A. § 5493(d)(2).
9 12 U.S.C.A. § 5494(a).
10 12 U.S.C.A. § 5497(b), (c).
11 12 U.S.C.A. § 5497(d).
 Regulations govern payments to victims from the fund. 12 C.F.R. §§ 1075.100 to 1075.110.
12 12 U.S.C.A. § 5535(c).

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§ 255. General purpose, objectives, and functions—Limitations

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The Consumer Financial Protection Act of 2010 (CFPA)¹ prescribes limits on the authority granted to the Bureau of Consumer Financial Protection, generally providing, among other limitations, that the Bureau is not permitted to exercise any authority with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service except to the extent that they are engaged in offering or providing any consumer financial product or service or is otherwise subject to any enumerated consumer law.² Moreover, the Bureau is not permitted to exercise any authority with respect to a person who is a merchant, retailer, or seller of any nonfinancial good or service but only to the extent that such person extends credit directly to a consumer, in a case in which the good or service being provided is not itself a consumer financial product or service; directly or indirectly collects debt arising from credit extended as described; or sells or conveys debt as described that is delinquent or otherwise in default.³ Other limitations are imposed for real estate brokers or agents,⁴ manufactured home retailers and modular home retailers,⁵ accountants and tax preparers,⁶ the practice of law,⁷ and others specified.⁸

Observation:

The CFPA provides for the preservation of state law,⁹ except to the extent of any inconsistency,¹⁰ and authorizes civil actions by the state attorneys general (or equivalent officers).¹¹

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Footnotes

- 1 § 254.
- 2 12 U.S.C.A. § 5517(a)(1).
- 3 12 U.S.C.A. § 5517(a)(2).
- 4 12 U.S.C.A. § 5517(b).
- 5 12 U.S.C.A. § 5517(c).
- 6 12 U.S.C.A. § 5517(d).
- 7 12 U.S.C.A. § 5517(e).
- 8 12 U.S.C.A. § 5517(f) to (m); 12 U.S.C.A. § 5519.
- 9 12 U.S.C.A. §§ 5551 to 5553.
- 10 12 U.S.C.A. § 5551(a)(1).
- 11 12 U.S.C.A. § 5552(a)(1).

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§ 256. Prohibited acts

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The Consumer Financial Protection Act of 2010 (CFPA)¹ gives the Bureau of Consumer Financial Protection (Bureau) the authority to prohibit unfair, deceptive, or abusive acts or practices, and specifically to take any action authorized under the CFPA to prevent a covered person or service provider from committing or engaging in an unfair, deceptive, or abusive act or practice under federal law in connection with any transaction with a consumer for a consumer financial product or service, or the offering of a consumer financial product or service.²

Practice Tip:

The Bureau's authority to declare an act or practice unlawful as unfair requires that the Bureau have a reasonable basis for concluding that it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers and that such substantial injury is not outweighed by countervailing benefits to consumers or to competition.³ Similarly, as to abusive acts or practices, the Bureau must find that they materially interfere with the ability of a consumer to understand a term or condition of a consumer financial product or service or take unreasonable advantage of the consumer's understanding, ability for self-protection, or reasonable reliance.⁴

Specifically, under the CFPA, it is unlawful for any covered person or service provider to offer or provide to a consumer any financial product or service not in conformity with federal consumer financial law, or otherwise commit any act or omission in violation of a federal consumer financial law; to engage in any unfair, deceptive, or abusive act or practice;⁵ to fail or refuse to permit access to or copying of records; to establish or maintain records; or to make reports or provide information to the Bureau.⁶ It is unlawful for any person to knowingly or recklessly provide substantial assistance to a covered person or service provider in violation of the CFPA, and the provider will be deemed in violation of the CFPA to the same extent as the person to whom such assistance is provided.⁷

CUMULATIVE SUPPLEMENT

Cases:

Attorney's written agreements with clients, which accurately described services attorney would perform, did not eliminate attorney's liability under Consumer Financial Protection Act for prior deceptive acts in using marketing materials that misrepresented to clients that attorney's home loan modification program was government affiliated. Consumer Financial Protection Act of 2010, § 1036(a)(1)(B), 12 U.S.C.A. § 5536(a)(1)(B). [Consumer Financial Protection Bureau v. Gordon](#), 819 F.3d 1179 (9th Cir. 2016).

Welcome letters sent to consumers by mortgage service providers did not qualify as consumer-specific commercial communications, and were thus is not subject to disclosure requirements for mortgage service providers under the Consumer Financial Protection regulation, where providers sent letter after consumers had hired them. 12 C.F.R. § 1015.4(b). [Consumer Finance Protection Bureau v. Mortgage Law Group, LLP](#), 196 F. Supp. 3d 920 (W.D. Wis. 2016).

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Footnotes

- 1 § 254.
- 2 12 U.S.C.A. § 5531(a), (b).
- 3 12 U.S.C.A. § 5531(c).
- 4 12 U.S.C.A. § 5531(d).
- 5 12 U.S.C.A. § 5536(a)(1).
No person shall be held to have violated this subsection solely by virtue of providing or selling time or space to a covered person or service provider placing an advertisement. 12 U.S.C.A. § 5536(b).
- 6 12 U.S.C.A. § 5536(a)(2).
- 7 12 U.S.C.A. § 5536(a)(3).

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§ 257. Required disclosures; consumer rights to information

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The Consumer Financial Protection Act of 2010 (CFPA)¹ gives the Bureau of Consumer Financial Protection (Bureau) the authority to prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service in light of the facts and circumstances.²

The CFPA requires covered entities to make available to a consumer, upon request, information in the control or possession of the covered person concerning the consumer financial product or service that the consumer obtained from such covered person, including information relating to any transaction, series of transactions, or to the account including costs, charges and usage data,³ subject to specified exceptions.⁴

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Footnotes

- ¹ § 254.
- ² 12 U.S.C.A. § 5532(a).
- ³ 12 U.S.C.A. § 5533(a).
- ⁴ 12 U.S.C.A. § 5533(b).

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IX. Consumer Financial Protection

§ 258. Administrative procedure; complaints, investigations, hearings, and adjudications

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The Consumer Financial Protection Act of 2010 (CFPA),¹ directs the Bureau of Consumer Financial Protection (Bureau), in consultation with the appropriate regulatory agencies, to establish reasonable procedures to provide a timely response to consumers' complaints.² The entity subject to supervision by the Bureau must provide a timely response, in writing where appropriate, to the Bureau, the prudential regulators, and any other agency having jurisdiction over such covered person concerning a consumer complaint or inquiry, including specified content,³ or requested information, subject to certain exclusions.⁴

The Bureau may engage in joint investigations and requests for information⁵ and may issue subpoenas for witnesses and documents or other material, enforceable by sanctions and contempt,⁶ or may issue a civil investigative demand for production of documents or things.⁷ Demand material is subject to confidential treatment.⁸

Hearings and adjudications by the Bureau are authorized in the manner prescribed by the Administrative Procedures Act.⁹ Special rules are prescribed for cease-and-desist proceedings¹⁰ and the enforcement of orders.¹¹

Specific provision is made for the relief available.¹²

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Footnotes

1	§ 254.
2	12 U.S.C.A. § 5534(a).
3	12 U.S.C.A. § 5534(b).
4	12 U.S.C.A. § 5534(c).
5	12 U.S.C.A. § 5562(a).
6	12 U.S.C.A. § 5562(b).
7	12 U.S.C.A. § 5562(c).
8	12 U.S.C.A. § 5562(d).
9	12 U.S.C.A. § 5563(a).
10	12 U.S.C.A. § 5563(b), (c).
11	12 U.S.C.A. § 5563(d).
12	12 U.S.C.A. § 5565.

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§ 259. Litigation authority; criminal referrals

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The Consumer Financial Protection Act of 2010 (CFPA),¹ authorizes the Bureau of Consumer Financial Protection (Bureau) to commence a civil action against any person who violates a federal consumer financial law to impose a civil penalty or to seek all appropriate legal and equitable relief, including a permanent or temporary injunction as permitted by law.² Specific provision is made for the relief available.³

The Bureau must, if it obtains evidence that any person, domestic or foreign, has engaged in conduct that may constitute a violation of federal criminal law, transmit such evidence to the Attorney General of the United States, who may institute criminal proceedings under appropriate law, provided that nothing in the provision affects any other authority of the Bureau to disclose information.⁴

CUMULATIVE SUPPLEMENT

Cases:

Congress authorized the Consumer Financial Protection Bureau (CFPB) to bring actions in federal court to enforce consumer protection statutes and regulations, and with this authorization, the Executive Branch, through the CFPB, need not suffer a particularized injury to have Article III standing to bring an enforcement action—the CFPB is charged under the Take Care Clause to enforce federal law. [U.S.C.A. Const. Art. 3, § 2, cl. 1](#); Consumer Financial Protection Act of 2010, § 1054(a, b), [12 U.S.C.A. § 5564\(a, b\)](#). [Consumer Financial Protection Bureau v. Gordon](#), 819 F.3d 1179 (9th Cir. 2016).

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Footnotes

- 1 § 254.
- 2 12 U.S.C.A. § 5564.
- 3 12 U.S.C.A. § 5565.
- 4 12 U.S.C.A. § 5566.

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§ 260. Protection of employees from retaliation or discrimination

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The Consumer Financial Protection Act of 2010 (CFPA)¹ establishes protection for employees of entities regulated by the CFPA,² providing that no covered person or service provider may terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees by reason of the fact that such employee or representative, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has provided information, testified, filed proceedings, or objected to a believed violation.³

The CFPA sets forth the procedure to be filed by any person who believes he or she has been discharged or otherwise discriminated against in violation of the provision.⁴

Caution:

The rights and remedies provided by the CFPA may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.⁵

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Footnotes

- 1 § 254.
- 2 12 U.S.C.A. § 5567.
- 3 12 U.S.C.A. § 5567(a)(1) to (4).
- 4 12 U.S.C.A. § 5567(c).
- 5 12 U.S.C.A. § 5567(d).

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A.L.R. Index, Disclosures

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X. Federal Legislation Affecting State Legislation

§ 261. Truth in Lending Act

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[Preemptive Effect of Truth in Lending Act \(TILA\), 61 A.L.R. Fed. 2d 505](#)

[Application of Truth in Lending Act \(15 U.S.C.A. secs. 1601 et seq.\) to loans which are void under state laws, 54 A.L.R. Fed. 822](#)

The Federal Truth in Lending Act (TILA) does not annul, alter, or affect the laws of any state relating to the disclosure of information in connection with credit transactions except to the extent that those laws are inconsistent with the provisions of the TILA, and then only to the extent of the inconsistency,¹ including, but not limited to, laws relating to the types, amounts, or rates of charges, or any element or elements of charges, and it does not extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.² The provision, also referred to as the TILA savings clause, is limited to the TILA and does not prevent preemption by other federal statutes.³ The implementing regulation makes detailed provisions with regard to inconsistent state law disclosure requirements and preemption of inconsistent requirements.⁴

The requirement of inconsistency warranting TILA preemption is one of actual conflict⁵ or explicit inconsistency,⁶ as renders compliance with both federal and state regulation a physical impossibility, or where the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,⁷ as in a longer state limitations statute,⁸ or

lower state threshold for points and fees.⁹ Substantively consistent state provisions¹⁰ and even broader state provisions are not preempted as in state proscriptions of conduct not specifically authorized by the TILA¹¹ or state provisions relating to oral misrepresentations not regulated by the TILA.¹²

A violation of the TILA does not constitute a violation of a state consumer statute unless the state statute incorporates the TILA provisions,¹³ in which case TILA compliance is a defense to the state claim.¹⁴

Observation:

A state law claim is preempted to the extent that it is based on TILA violations and not on the state statute¹⁵ even if the TILA does not preempt an independent application of the state statute.¹⁶

Certain federal TILA requirements for disclosures in a credit card or charge card application or solicitation or renewal notice do supersede state law, subject to state law enforcement of the TILA requirements.¹⁷

In any action or proceeding in any court involving a consumer credit sale, the required disclosure of the annual percentage rate in connection with the sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.¹⁸

With certain exceptions, the TILA and regulations issued under it do not affect the validity or enforceability of any contract or obligation under state or federal law.¹⁹

CUMULATIVE SUPPLEMENT

Cases:

TILA did not conflict preempt state's Pennsylvania Unfair Trade Practices and Consumer Protection Law (CPL) claims against student loan originator, alleging that originator failed to disclose to borrowers who took out subprime student loans that they were more likely to default than pay back loans; although originator claimed that state would require it to disclose additional details regarding preferred lender agreements, school graduation rates, default potential, and the effect of default on credit scores, and thus conflicted with TILA's comprehensive disclosure rules, state did not allege that originator failed to make required disclosures, but instead alleged that originator engaged in unfair acts or practices in violation of the CPL while originating private subprime student loans. Truth in Lending Act, § 102 et seq., [15 U.S.C.A. § 1601 et seq.](#); [73 Pa. Stat. Ann. §§ 201-1 et seq.](#) [Pennsylvania v. Navient Corporation](#), 354 F. Supp. 3d 529 (M.D. Pa. 2018), motion to certify appeal granted, [2019 WL 1052014](#) (M.D. Pa. 2019).

[END OF SUPPLEMENT]

Footnotes

- 1 15 U.S.C.A. § 1610(a)(1).
The TILA provisions on credit billing and consumer leases contain similar separate provisions. 15 U.S.C.A. §§ 1666j(a), 1667e(a).
- 2 15 U.S.C.A. § 1610(b).
- 3 Falcocchia v. Saxon Mortg., Inc., 709 F. Supp. 2d 873 (E.D. Cal. 2010).
- 4 12 C.F.R. § 226.28(a)(1).
- 5 Permobil, Inc. v. American Exp. Travel Related Services Co., Inc., 571 F. Supp. 2d 825 (M.D. Tenn. 2008).
- 6 Peel v. BrooksAmerica Mortg. Corp., 788 F. Supp. 2d 1149 (C.D. Cal. 2011).
The provision is one of express preemption, to the extent of the inconsistency. *In re Frykberg*, 490 B.R. 652 (B.A.P. 1st Cir. 2013).
- 7 Permobil, Inc. v. American Exp. Travel Related Services Co., Inc., 571 F. Supp. 2d 825 (M.D. Tenn. 2008).
- 8 Champlaie v. BAC Home Loans Servicing, LP, 706 F. Supp. 2d 1029 (E.D. Cal. 2009); *Jordan v. Paul Financial, LLC*, 745 F. Supp. 2d 1084 (N.D. Cal. 2010).
- 9 *In re Frykberg*, 490 B.R. 652 (B.A.P. 1st Cir. 2013).
- 10 Amparan v. Plaza Home Mortg., Inc., 678 F. Supp. 2d 961 (N.D. Cal. 2008); *Kajitani v. Downey Sav. and Loan Ass'n, F.A.*, 647 F. Supp. 2d 1208 (D. Haw. 2008).
- 11 Heastie v. Community Bank of Greater Peoria, 690 F. Supp. 716 (N.D. Ill. 1988).
- 12 Shaterian v. Wells Fargo Bank, N.A., 829 F. Supp. 2d 873 (N.D. Cal. 2011); *Kajitani v. Downey Sav. and Loan Ass'n, F.A.*, 647 F. Supp. 2d 1208 (D. Haw. 2008).
- 13 *Jordan v. Paul Financial, LLC*, 745 F. Supp. 2d 1084 (N.D. Cal. 2010).
- 14 Hoffman v. Grossinger Motor Corp., 218 F.3d 680 (7th Cir. 2000) (applying Illinois law).
- 15 Cordon v. Wachovia Mortg., a Div. of Wells Fargo Bank, N.A., 776 F. Supp. 2d 1029 (N.D. Cal. 2011); *Fultz v. World Savings and Loan Ass'n*, 571 F. Supp. 2d 1195 (W.D. Wash. 2008).
- 16 *Tedder v. Deutsche Bank Nat. Trust Co.*, 863 F. Supp. 2d 1020 (D. Haw. 2012).
- 17 15 U.S.C.A. § 1610(e).
- 18 15 U.S.C.A. § 1610(c).
- 19 15 U.S.C.A. § 1610(d).

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§ 262. Truth in Lending Act—Procedure to determine inconsistency and effect

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[Liability for Unfair or Deceptive Practices with Respect to Force-Placed Insurance](#), 96 A.L.R.6th 125

Trial Strategy

[Insured's "Reasonable Expectations" as to Coverage of Insurance Policy](#), 108 Am. Jur. Proof of Facts 3d 351

[Fraud of Insurer in Inducement or Execution of Contract](#), 23 Am. Jur. Proof of Facts 2d 527

Forms

For purposes of determining state law preemption by the Federal Truth in Lending Act (TILA),¹ the Bureau of Consumer Financial Protection (Bureau), on its own motion or upon the request of any creditor, state, or other interested party which is submitted in accordance with prescribed procedures, is to determine whether any inconsistency exists or whether any disclosure required under state law is substantially the same,² under standards³ and procedures provided by Regulation Z.⁴ A determination that a state-required disclosure is inconsistent bars creditors in that state from making disclosures in that manner;⁵ a contrary determination permits creditors in that state to make disclosure in compliance with the state law in lieu of the TILA, except as to the annual percentage rate and finance charge and certain mortgages.⁶

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Footnotes

- 1 § 262.
- 2 15 U.S.C.A. § 1610(a).
- 3 12 C.F.R. § 226.28(a), (b).
- 4 12 C.F.R. § 226.28(c), referencing 12 C.F.R. Pt. 226, App. A.
- 5 15 U.S.C.A. § 1610(a)(1).
- 6 15 U.S.C.A. § 1610(a)(2); 12 C.F.R. § 226.28(b).

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§ 263. Truth in Lending Act—Exemption of state-regulated transactions

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Some state-regulated transactions are exempted by regulation of the Bureau of Consumer Financial Protection (Bureau) from the requirements of the Truth in Lending Act (TILA)¹ on the State's application under Regulation Z.² The exemption applies to credit transactions if the Bureau determines that under the law of the state, that class of transactions is subject to requirements substantially similar to those imposed under the TILA and that there is adequate provision for enforcement.³ Similar provisions apply to credit billing, if state law "gives greater protection to the consumer,"⁴ and consumer leases, if state law "gives greater protection and benefit to the consumer."⁵

Caution:

Any exemption granted to a state does not extend to the civil liability provisions of the TILA.⁶

Practice Tip:

In a state with a federal exemption from the TILA, borrowers still retain the ability to file TILA suits for damages in federal court.⁷

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Footnotes

- 1 15 U.S.C.A. §§ 1633, 1666j(b), 1667e(b); 12 C.F.R. § 226.29.
- 2 12 C.F.R. § 226.29(a).
The applicable procedures are set forth in the regulation. 12 C.F.R. § 226.29(c), referencing 12 C.F.R. Pt. 226, App. B.
- 3 15 U.S.C.A. § 1633.
- 4 15 U.S.C.A. § 1666j(b).
- 5 15 U.S.C.A. § 1667e(b).
- 6 12 C.F.R. § 226.29(b).
- 7 *Belini v. Washington Mut. Bank, FA*, 412 F.3d 17 (1st Cir. 2005).

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§ 264. Equal Credit Opportunity Act

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[Insured's "Reasonable Expectations" as to Coverage of Insurance Policy](#), 108 Am. Jur. Proof of Facts 3d 351

[Fraud of Insurer in Inducement or Execution of Contract](#), 23 Am. Jur. Proof of Facts 2d 527

Forms

The Equal Credit Opportunity Act (ECOA) does not annul, alter, or affect the law of any state, or exempt any person who is subject to its provisions from complying with the law of any state, with respect to credit discrimination, except to the extent that state law is inconsistent with the ECOA and then only to the extent of the inconsistency.¹ The Bureau of Consumer Financial Protection (Bureau) is authorized to determine whether such inconsistencies exist but may not determine that a state law is inconsistent if it determines that the state law gives greater protection to the applicant.² Regulations prescribe when a state law is deemed to be inconsistent.³

The ECOA also deals with the exemption of state-regulated credit transactions if state law requirements are substantially similar to the ECOA or offer greater protection for the applicant, and there is adequate provision for enforcement.⁴ The implementing regulation provides for applications for exemption.⁵

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Footnotes

- | | |
|---|-------------------------|
| 1 | 15 U.S.C.A. § 1691d(f). |
| 2 | 15 U.S.C.A. § 1691d(f). |
| 3 | 12 C.F.R. § 202.11(b). |
| 4 | 15 U.S.C.A. § 1691d(g). |
| 5 | 12 C.F.R. § 202.11(e). |

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§ 265. Fair Debt Collection Practices Act

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The Fair Debt Collection Practices Act (FDCPA) does not annul, alter, or affect state law or exempt any person who is subject to its provisions from complying with state law with respect to debt-collection practices except to the extent that state law is inconsistent with any of its provisions and then only to the extent of the inconsistency, and it provides that a state law is not inconsistent if the protection the law affords is greater than the protection provided by the FDCPA.¹ The FDCPA preempts only state laws that afford consumers less protection than that provided by the FDCPA, not those that provide greater protection to consumers,² such as a state's more inclusive definition of "debt collector,"³ or a longer state limitations statute.⁴ Only state laws which make it impossible to comply with both state and federal law, such as where state law requires conduct prohibited by the FDCPA, are preempted.⁵

A state debt collection statute interfering with the plain language of the FDCPA regarding collectors' representations to debtors is preempted, as contrary to Congress' express purpose in enacting the FDCPA regardless of whether Congress explicitly states that state law is preempted.⁶

Federal claims under the FDCPA preempted a state litigation privilege asserted against claims under the state's unfair competition law.⁷

The FDCPA also deals with the exemption of any class of state debt-collection practices if the state law requirements are substantially similar to the FDCPA, and there is adequate provision for enforcement.⁸ Regulations provide procedures for state application for exemption.⁹

CUMULATIVE SUPPLEMENT

Cases:

For statute-of-limitations purposes, discrete violations of the Fair Debt Collection Practices Act (FDCPA) are analyzed on an individual basis. Consumer Credit Protection Act § 802, 15 U.S.C.A. § 1692(k)(d). *Osinubepi-Alao v. Plainview Financial Services, Ltd.*, 44 F. Supp. 3d 84 (D.D.C. 2014).

Provision of the Florida Consumer Collection Practices Act (FCCPA) prohibiting a debt collector from communicating with a debtor with such frequency so as to constitute harassment was preempted by federal law such that debtor who had taken out a student loan under the Federal Family Education Loan Program (FFELP) could not use that FCCPA provision as a basis for action against debt collector; debt collectors for federal government-issued loans were bound by the Department of Education's regulations regarding debt-collection efforts, which required collectors to communicate with debtors in a certain manner and with a certain level of frequency, and there was no clear definition of what constituted harassment under the FCCPA provision at issue. *Fla. Stat. Ann. § 559.72(7)*; 34 C.F.R. § 682.411. *Clark v. Navient Solutions, LLC*, 396 F. Supp. 3d 1083, 370 Ed. Law Rep. 273 (M.D. Fla. 2019).

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Footnotes

- 1 15 U.S.C.A. § 1692n.
- 2 *Desmond v. Phillips & Cohen Associates, Ltd.*, 724 F. Supp. 2d 562 (W.D. Pa. 2010).
- 3 *Pirouzian v. SLM Corp.*, 396 F. Supp. 2d 1124, 204 Ed. Law Rep. 532 (S.D. Cal. 2005).
- 4 *McDermott v. Marcus, Errico, Emmer & Brooks, P.C.*, 911 F. Supp. 2d 1 (D. Mass. 2012), amended in part on other grounds, 2013 WL 4539071 (D. Mass. 2013).
A shorter state limitations period is preempted. *Lensch v. Armada Corp.*, 795 F. Supp. 2d 1180 (W.D. Wash. 2011).
- 5 *Sanchez v. Client Services, Inc.*, 520 F. Supp. 2d 1149 (N.D. Cal. 2007).
- 6 *Lensch v. Armada Corp.*, 795 F. Supp. 2d 1180 (W.D. Wash. 2011).
- 7 *Johnson v. JP Morgan Chase Bank DBA Chase Manhattan*, 536 F. Supp. 2d 1207 (E.D. Cal. 2008).
- 8 15 U.S.C.A. § 1692o.
- 9 12 C.F.R. § 1006.6.

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§ 266. Electronic Fund Transfer Act

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The Electronic Fund Transfer Act (EFTA) does not annul, alter, or affect state law relating to electronic fund transfers, dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards, except to the extent that they are inconsistent with the EFTA, and then only to the extent of the inconsistency.¹ A state law is not inconsistent if it affords any consumer greater protection than that afforded by the EFTA.² The Bureau of Consumer Financial Protection (Bureau) is authorized to determine whether a state requirement is inconsistent or affords greater protection, and if it determines that such a requirement is inconsistent, financial institutions incur no liability under the law of that state for a good-faith failure to comply with the requirement even if the determination is subsequently amended, rescinded, or determined to be invalid.³

The EFTA did not completely preempt claims under a state statute when the federal court could not decide in the first instance, for purposes of removal of the action to federal court, whether the EFTA provided a federal defense to the state law claims.⁴

A state statute providing for custodial escheat of stored value cards provided greater protection than the EFTA and was shielded from express preemption, but common-law preemption did apply because the statute's escheat abandonment provision would allow an escheat even absent a clear connection to the owner or issuer, infringing the sovereignty of other states and resulting in competing state claims.⁵

Observation:

The EFTA antipreemption provision applies only to the EFTA and not to preemption by other federal statutes.⁶

By regulation,⁷ the Bureau must exempt from the EFTA any class of electronic fund transfers if state law requirements are substantially similar to the EFTA, and there is adequate provision for enforcement.⁸ The regulation also provides for states' exemption applications.⁹

CUMULATIVE SUPPLEMENT

Cases:

Electronic Fund Transfer Act (EFTA) did not bar stop-payment fees per se, and thus bank customers failed to state claims under EFTA and California's Unfair Competition Law (UCL) alleging bank's \$30 stop-payment fee violated EFTA and that customers were forced to waive rights to stop payment; EFTA did not define entire universe of conditions for stopping payment, and EFTA was aimed to promote disclosure, prevent fraud, and allocate liabilities, rather than to regulate service fees charged by financial institutions. Consumer Credit Protection Act §§ 907, 914, 15 U.S.C.A. §§ 1693e, 1693f; Cal. Bus. & Prof. Code § 17204. *Foreman v. Bank of America, N.A.*, 401 F. Supp. 3d 914 (N.D. Cal. 2019).

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Footnotes

- 1 15 U.S.C.A. § 1693q.
- 2 15 U.S.C.A. § 1693q.
- 3 15 U.S.C.A. § 1693q.
- 4 *Bernhard v. Whitney Nat. Bank*, 523 F.3d 546 (5th Cir. 2008).
- 5 *New Jersey Retail Merchants Ass'n v. Sidamon-Eristoff*, 669 F.3d 374 (3d Cir. 2012), cert. denied, 133 S. Ct. 528, 184 L. Ed. 2d 339 (2012).
- 6 *Bank of America v. City and County of San Francisco*, 309 F.3d 551, 13 A.L.R. Fed. 2d 733 (9th Cir. 2002), as amended on denial of reh'g and reh'g en banc, (Dec. 20, 2002).
- 7 12 C.F.R. § 205.12(b).
- 8 15 U.S.C.A. § 1693r.
- 9 12 C.F.R. § 205.12(c).

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§ 267. Consumer Credit Protection Act

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The provisions of the Consumer Credit Protection Act (CCPA) prohibiting extortionate credit transactions do not preempt any field of law with respect to which state legislation would be permissible in the absence of the CCPA.¹ A law of any state that would be valid in the absence of the CCPA may not be held invalid or inapplicable by virtue of the existence of the CCPA, and no officer, agency, or instrumentality of any state may be deprived of jurisdiction over any offense over which it would have jurisdiction in the absence of the federal statutes.²

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¹ 18 U.S.C.A. § 896.

² 18 U.S.C.A. § 896.

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§ 268. Fair Credit Reporting Act

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The provisions of the Fair Credit Reporting Act (FCRA), except as otherwise provided,¹ do not annul, alter, affect, or exempt any person subject to the FCRA from complying with the laws of any state with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of the FCRA, and then only to the extent of the inconsistency.²

Claims made under state law concerning the furnishing and correcting of information to credit reporting agencies are preempted by the FCRA.³ To the extent that credit cardholders' claim against an issuing bank and its credit card division for violation of the state consumer protection act did not rest on the furnishing of information by a bank to a consumer reporting agency, the state claim was not preempted by the FCRA.⁴ The FCRA did not preempt state defamation claims asserted against corporations that furnished credit information where it was alleged that they furnished false information with malice or willful intent to injure.⁵

CUMULATIVE SUPPLEMENT

Cases:

Federal Fair Credit Reporting Act (FCRA) preempted consumer's state-law claim for defamation against credit card issuers and other creditors, arising out of their alleged furnishing of credit information to consumer reporting agencies (CRA). [15 U.S.C.A. § 1681t\(b\)\(1\)\(F\)\(ii\)](#). [Langan v. United Services Automobile Association](#), 69 F. Supp. 3d 965 (N.D. Cal. 2014).

Tenant's defamation claim, under District of Columbia law, against her former landlord was preempted by Fair Credit Reporting Act (FCRA), where all of landlord's allegedly defamatory statements were reports of credit-related information. Consumer

Credit Protection Act § 625, 15 U.S.C.A. § 1681t(b)(1)(F). *Pleznac v. Equity Residential Management, L.L.C.*, 320 F. Supp. 3d 99 (D.D.C. 2018).

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Footnotes

- 1 15 U.S.C.A. § 1681t(b), (c).
- 2 15 U.S.C.A. § 1681t(a).
- 3 *Rex v. Chase Home Finance LLC*, 905 F. Supp. 2d 1111 (C.D. Cal. 2012); *Collins v. BAC Home Loans Servicing LP*, 912 F. Supp. 2d 997 (D. Colo. 2012).
- 4 *Wenner v. Bank of America, NA*, 637 F. Supp. 2d 944 (D. Kan. 2009).
- 5 *Jordan v. Trans Union LLC*, 377 F. Supp. 2d 1307 (N.D. Ga. 2005).

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§ 269. Real Estate Settlement Procedures Act

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The Real Estate Settlement Procedures Act of 1974 (RESPA) does not annul, alter, or affect, or exempt any person subject to its provisions from complying with, the laws of any state with respect to settlement practices, except to the extent that such laws are inconsistent with the RESPA and then only to the extent of the inconsistency.¹ The Bureau of Consumer Financial Protection (Bureau) is authorized to determine whether such inconsistencies exist but may not determine that a state law is inconsistent if the Bureau determines that it gives greater protection to the consumer.²

Caution:

The RESPA antipreemption clause does not foreclose preemption under other federal statutes even as to claims relying on RESPA and its implementing regulations.³

CUMULATIVE SUPPLEMENT

Cases:

Homeowner was not a borrower, and thus did not have a cause of action under Real Estate Settlement Procedures Act (RESPA) for loan servicer's failure to properly review homeowner's requests before foreclosing on her house, although homeowner signed mortgage when buying her house, where homeowner did not sign the loan for the house and was not personally obligated under the loan. Real Estate Settlement Procedures Act of 1974 § 6, [12 U.S.C.A. § 2605\(f\)](#). [Keen v. Helson, 930 F.3d 799 \(6th Cir. 2019\)](#).

Mortgagors' allegations that charges accrued on their mortgage loan due to mortgagee's delay in reviewing their loan modification applications, mortgagors experienced damage to their credit score on account of their loan remaining in arrears, and they suffered emotional distress from having to repeatedly resubmit unnecessary loan modifications and supplements, continuously contact mortgagee for updates on their loan modification applications, and address the contradictions and mistakes made by mortgagee, which allegations related to mortgagors' loss mitigation application rather than the imposition of improper financing charges, failed to establish actual damages supporting Real Estate Settlement Procedures Act (RESPA) claim. Real Estate Settlement Procedures Act of 1974, § 2 et seq., [12 U.S.C.A. § 2601 et seq.](#) [Canty v. Wells Fargo Bank, N.A., 463 F. Supp. 3d 57 \(D. Mass. 2020\)](#).

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Footnotes

- [1](#) [12 U.S.C.A. § 2616.](#)
- [2](#) [12 U.S.C.A. § 2616.](#)
- [3](#) [Munoz v. Financial Freedom Senior Funding Corp., 567 F. Supp. 2d 1156 \(C.D. Cal. 2008\).](#)

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§ 270. Home Mortgage Disclosure Act

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The Home Mortgage Disclosure Act (HMDA) does not annul, alter, or affect, or exempt any state-chartered depository institution subject to its provisions from complying with, the laws of any state with respect to public disclosure and recordkeeping, except to the extent that they are inconsistent with the HMDA, and then only to the extent of the inconsistency.¹ The Bureau of Consumer Financial Protection (Bureau) is authorized to determine whether such inconsistencies exist, and it may not determine that there is an inconsistency if it determines that state law requires greater detail or disclosure.² Also, the Bureau may exempt state-chartered depository institutions if it determines that under state law, an institution is subject to requirements substantially similar to those imposed under the HMDA and that the law contains adequate provisions for enforcement.³

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Footnotes

- 1 [12 U.S.C.A. § 2805\(a\).](#)
- 2 [12 U.S.C.A. § 2805\(a\).](#)
- 3 [12 U.S.C.A. § 2805\(b\); 12 C.F.R. § 203.3\(a\)\(1\).](#)

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§ 271. Home Owners' Loan Act

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The Home Owners' Loan Act (HOLA),¹ in clarifying state law preemption standards for federal savings associations, provides that any determination by a court, officer, or agency regarding the relation of state law to a provision of this chapter or any regulation or order prescribed under the chapter shall be made in accordance with the laws and legal standards applicable to national banks regarding the preemption of state law.² In addition, notwithstanding certain authorities granted under the HOLA authorizing the promulgation of regulations preempting state law, the HOLA does not occupy the field in any area of state law.³ The ability of the Comptroller of the Currency to bring an enforcement action under the HOLA does not preclude any private party from enforcing rights granted under federal or state law in the courts.⁴

The HOLA does not preempt homeowners' claim for a violation of a state deceptive and unfair trade practices act, which is an area of consumer protection traditionally regulated by the states.⁵ If the substance of a state law unfair or deceptive practices claim against a federal savings bank, would tend to impose specific requirements on a lender, it is preempted by the HOLA even if the state statute itself is not wholly subject to HOLA preemption.⁶

The HOLA does not preempt claims under a state's unfair competition law in which the predicated acts are violations of the general legal duties with which every business must comply; only claims that are specific to a defendant's lending activities, as distinguished from legal duties applicable to all businesses, are preempted.⁷

Observation:

The 2010 amendments to the preemption provision of the HOLA did not affect prior preemption provisions and regulations with respect to a mortgage loan agreement made before the amendments.⁸

CUMULATIVE SUPPLEMENT

Cases:

Home Owners' Loan Act (HOLA) did not preempt mortgagors' claim against lender's successor-in-interest, a national bank, for violation of California law requiring successor to pay mortgagors interest on money held in escrow accounts in residential mortgages, based on successor's claim that lender was federal savings bank governed by HOLA, and not by National Banking Act (NBA), which did not preempt California escrow interest laws; HOLA reached only conduct of federal savings bank, and mortgagors were not alleging any violations resulting from lender's conduct, but were challenging successor's conduct in failing to pay escrow interest, in alleged violation of California statute requiring financial institutions that issued mortgage loans to pay interest on funds held in escrow for residential mortgages. Home Owners' Loan Act of 1933, § 1 et seq., [12 U.S.C.A. § 1461 et seq.](#); [Cal. Civ. Code § 2954.8\(a\)](#); [12 C.F.R. § 560.2\(a\), \(b\)\(6\)](#). [McShannock v. JP Morgan Chase Bank N.A.](#), 354 F. Supp. 3d 1063 (N.D. Cal. 2018).

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Footnotes

- 1 [12 U.S.C.A. § 1461.](#)
- 2 [12 U.S.C.A. § 1465\(a\).](#)
- 3 [12 U.S.C.A. § 1465\(b\)](#), referencing [12 U.S.C.A. § 1463](#) and [12 U.S.C.A. § 1464](#).
- 4 [12 U.S.C.A. § 1465\(d\).](#)
- 5 [Degutis v. Financial Freedom, LLC](#), 2013 WL 5705438 (M.D. Fla. 2013).
- 6 [Henning v. Wachovia Mortg., FSB](#), 2013 WL 5229837 (D. Mass. 2013).
- 7 [Casault v. Federal Nat. Mortg. Ass'n](#), 915 F. Supp. 2d 1113 (C.D. Cal. 2012).
- 8 [Copeland-Turner v. Wells Fargo Bank](#), 800 F. Supp. 2d 1132 (D. Or. 2011).

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